KEHAR SINGH & ORS.

v.

THE STATE (DELHI ADMINISTRATION)

SUPREME COURT, INDIA
GL OZA J
K JAGANNATHA SHETTY J
BC RAY J
[CRIMINAL APPEAL NOS. 180-182 OF 1987]
3 AUGUST 1988

CRIMINAL PROCEDURE: *India - Criminal Procedure Code 1973 - Section 194 - Additional and Assistant Sessions Judges to try cases made over to them - Smt. Indira Gandhi murder case tried by an Additional Sessions Judge, Tis Hazari Courts Delhi, nominated by High Court under s. 194 - Whether proper? (Yes) (paras. 19 and 113)*

CRIMINAL PROCEDURE: *India - Criminal Procedure Code 1973 - Section 9(6) - Venue of Smt.Indira Gandhi murder trial fixed in Tihar Jail, Delhi by Delhi High Court by a notification order - Whether Sessions trial held in Tihar Jail after such notification is according to law? (Yes) (paras. 21 and 117)*

CRIMINAL PROCEDURE: *India - Criminal Procedure Code 1973 - Section 327 (s. 352 of the old Code) - Court to be open - Constitution of India - Art. 21 - Holding of Smt. Ind representatives of press permitted to attend on passes issued by Jail authorities - Whether trial ceased to be public and open and thus got vitiated? (No) (paras. 23, 128-130, 142-43 and 255 to 269)*

EVIDENCE: *India - Commission of Inquiry Act 1952 - Section 6 - Evidence Act 1872 - Section 145 read with ss. 155(3) and 157 - Thakkar Commission appointed to enquire into inter alia, sequences of events and facts leading to assassination of Late Prime Minister Smt. Indira Gandhi and any conspiracy - Appellants i.e., accused before trial Court they whether were entitled to copies of statements of those prosecution witnesses who were examined by Thakkar Commission? (No) - Or summoning the Commission's Report? (No) (para. 38) (See paras. 149 to 183) - Postmortem of late Smt. Indira Gandhi - Question of a fuller post-mortem whether was necessary? (No) (para. 40)*

CONSTITUTIONAL LAW: *India - Article 136 - Scope or appeal by special leave to Supreme Court - Whether Supreme Court cannot go into questions of fact concurrently recorded by Courts below? - Principles stated. (paras. 41 and 85)*

EVIDENCE: *India - Evidence Act 1872 - Section 10 - Indian Penal Code 1860 - Sections 120A, 120B - Relevancy of evidence on conspiracy - Explained - Whether evidence led by prosecution in respect of conspiracy by Balbir Singh proves beyond reasonable doubt? (No) - Date of arrest on 3 December 1984 not acceptable, recovery of document Ex. PW26/B i.e., memo of events prepared by him for this conspiracy doubtful - Nothing in this on the basis of which inference of conspiracy may be drawn - Appearance of Felcon and offering of Ardas do not refer to conspiracy - Testimony of witness Amarjit Singh not reliable - No mention of this accused in testimony of Bimla Khalsa PW65 - In absence of any evidence confession of co-accused Satwant Singh cannot be used against Balbir Singh - Result - Acquittal. (paras. 43 to 74) (See paras. 186 to 214)*

CRIMINAL PROCEDURE: *India - Criminal Procedure Code 1973 - Sections 164 and 463 - Whether the confession of accused Satwant Singh being not made in the manner prescribed under s. 164 of Criminal Procedure Code is admissible in evidence and whether the same can be relied upon? (Yes) (para. 270)*

CRIMINAL LAW: *India - Penal Code 1860 - Section 302 read with s. 120B - Conviction of Kehar Singh for conspiracy to murder Smt. Indira Gandhi - A relative (Phoofa) of Bimla Khalsa evidence of PW65, Bimla Khalsa wife of Beant Singh (deceased accused) - Circumstance of Vak" Hukamnama - Ujagar Sandhu Incident in her evidence - Incident of 17 October 1984 - Trip to Amritsar - Amrit Chakhan ceremony - Recovery of golden Kara and Ring of Beant Singh from house of Kehar Singh - Post-crime conduct of Kehar Singh - Whether indicates that Kehar Singh was a co-conspirator to assassinate Mrs. Gandhi? (Yes) (paras. 75 to 84) (See paras. 215 to 234 and 299)*

CRIMINAL LAW: *India - Penal Code 1860 - Section 302 read with ss. 120B, 34, 307, 27 of Arms Act - Conviction of Satwant Singh under for assassinating Mrs. Gandhi - His crime pre-conduct - Testimony of eye witnesses corroborated by FIR - Post-mortem report and recovery of bullets tallied with Arm - Guilt proved even if confession not taken into account. (paras. 85 to 88, 235 to 249) (See also para. 297)*

CRIMINAL LAW: *India - Penal Code 1860 - Sections 302 read with s. 120B - Death sentence to Satwant Singh and Kehar Singh for assassinating Mrs. Gandhi and conspiracy to assassinate her - Whether proper? (Yes) (para. 84) (See paras 250, 251 and 298)*

This was an appeal by the appellants Kehar Singh, Balbir Singh and Satwant Singh against their conviction and sentence under s. 302 read with s. 120B of the Indian Penal Code and the appellant Satwant Singh under s. 302 read with s. 120B, ss. 34 and 307 of the Indian Penal Code and also under s. 27 of the Arms Act wherein they were found guilty for the assassination of the Prime Minister Indira Gandhi on 31 October 1984. All the three appellants were sentenced to death.

Held:

[1] The impugned notification of the High Court of Delhi directing that the trial of the three appellants shall be held at Tihar Jail, Delhi was not *ultra vires* s. 9(6) of the Criminal Procedure Code 1973.

[2] The charges against the appellant Satwant Singh have been duly proved. The concurrent findings of the trial Court as well as of the High Court on appeal that offences under s. 302 read with s. 120-B of the Indian Penal Code under s. 34 of the said Code have been proved must be upheld.

[3] The gruesome murder committed by the appellant who was employed as a security guard to protect the Prime Minister Indira Gandhi was one of the rarest of rare cases in which extreme penalty of death was called for.

[4] The charge of conspiracy against the appellant Kehar Singh with the appellant Satwant Singh and Beant Singh since deceased who are constable and sub-inspector respectively and who were posted at the Prime Minister's House to look after the security for Indira Gandhi was proved without any reasonable doubt.

[5] The conviction and death sentence against appellants Kehar Singh, Satwant Singh as confirmed by the High Court on appeal was upheld.

[6] The charge of conspiracy against the appellant Balbir Singh has not been proved and the appeal by him against his conviction and sentence was allowed and he was ordered to be set free forthwith.

[Appeal by Kehar Singh and Satwant Singh against their conviction and sentence was dismissed. Appeal by Balbir Singh against his conviction and sentence was allowed and he was ordered to be set free forthwith.]

Cases referred to:

Ram Krishnan Dalmia v. Justice Tendulkar, SCR [1959] 279
Pritam Singh v. The State [1950] AIR SC 169
Ram Raj v. State of Ajmer [1954] SCR 1133
Bhaginbhai Hirjibjhai v. State of Gujarat [1983] AIR SC 753
Sardar Sardul Singh Caveeshar v. State of Maharashtra [1964] 2 SCR 378
Reserve Bank of India v. Peerless G.F. & I.Co. [1987] AIR SC 1023
Lakshman v. Emperor [1931] AIR Bom 313
Ranjit Singh v. Chief Justice & Ors. [1985] (Vol 28) DLT 153
A.K. Roy v. Union of India [1982] 2 SCR 272 at 354
Sahai Singh v. Emperor [1917] AIR Lahore 311
Kailash Nath v. Emperor [1947] AIR All 436
In re: M.R. Ventakaraman [1950] AIR Mad 441
In re: T.R. Ganeshan [1950] AIR Mad 696
Prasanta Kumar v. The State [1952] AIR Cal 91
Narwar Singh and Ors. v. State [1952] AIR MP 193
Scott v. Scott, [1913] AC 417 at 477; [1911] 13 All ER 1
Naresh Shridhar Mirajkar v. State of Maharashtra [1963] 3 SCR 744
Gannet Co. v. De Pasquale, 443 US 368 [1979]
Richmond Newspaper Inc. v. Virginia 448 US 555 [1980]
Globe Newspapers v. Superior Court 457 US 596 [1982] 73 LED 248
Clinton E. Jancks v. United States 353 US 657: 1 LED 103
Nizam of Hyderbad v. A.M. Jacob ILR XIX Cal 52
Sohan Lal v. State [1965] AIR Bom 1
State of Maharashtra v. Ibrahim Mohd. [1978] Cr LJ 1157
State of Assam v. Suprabhat Bhadra [1982] Cr LJ 1672 (Assam)
Puhupram & Ors. v. State of M.P. [1968] MPLJ 629
Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar [1962] (Suppl) 2 SCR 297
Mirza Akbar v. King Emperor [1940] AIR PC 176
Sardul Singh Caveeshar v. The State of Bombay [1958] SCR 161
Bachan Singh v. State of Punjab [1980] 2 SCC 684
Machhi Singh v. State of Punjab [1983] 3 SCR 413
Cora Lillian McPherson v. Oran Leo McPherson [1936] AIR PC 246
Hem Raj Devilal v. The State of Ajmer [1954] AIR SC 462
Ram Chandra & Anor. v. State of Uttar Pradesh [1957] AIR SC 381
Nazir Ahmed v. King Emperor [1936] AIR PC 253(2)
Taylor v. Taylor [1876] 1 Ch D 426
State of Uttar Pradesh v. Singhara Singh & Ors. [1964] AIR SC 358
Ranbir Singh & Ors. v. Emperor [1932] Cr LJ 242
Pratap Singh v. The Crown [1925] ILR (Lahore Series) 415
Prag v. Emperor [1931] Cr LJ 97
Ambai Majhi v. The State [1966] Cr LJ 651

Abdul Rajak Murtaja Dafedar v. State of Maharashtra [1970] 1 SCR 551
Dagdu & Ors. etc. v. State of Maharashtra [1977] AIR AC 1573
Ram Prakash v. The State of Punjab [1959] SCR 1219
Manohar Singh v. Emperor [1946] AIR All 15
Sarwan Singh Rattan Singh v. State of Punjab [1957] AIR SC 637

Legislation referred to:
Arms Act [Ind] s. 27
Evidence Act 1872, [Ind] ss. 10, 145, 155(3), 157
Commission of Inquiry Act 1952, [Ind] s. 6
Constitution of India, art. 136
Criminal Procedure Code, [Ind] ss. 9(6), 164, 173, 194, 327, 463
Penal Code 1860, [Ind] ss. 34, 120A, 120B, 302, 307

For the appellant Kehar Singh - R.S. Sodhi (Amicus Curiae)
For the appellants - Satwant Singh and Balbir Singh - Shri Ram Jeth Malani, Senior Advocate (Amicus Curiae)
For the State - G. Ramaswami, Additional Solicitor General

JUDGMENT

GL Oza J:

These appeals by leave are directed against the conviction of the three appellants Kehar Singh, Balbir Singh and Satwant Singh under s. 302 read with s. 120-B, IPC and the appellant Satwant Singh under s. 302 read with s. 120-B, ss. 34 and 307, IPC and also under s. 27 of Arms Act. All the three were sentenced to death under s. 302 read with s. 120-B. The conviction and sentence of these appellants were confirmed by the High Court of Delhi by its judgment in Criminal Appeals Nos. 28-29/1986 and confirmation case No. 2/86. The case relates to a very unfortunate incident where the Prime Minister Smt. Indira Gandhi was assassinated by persons posted for her security at her residence.

The facts brought out during investigation are that Smt. Indira Gandhi had her residence in New Delhi at No. 1, Safdarjung Road. Her office was at No. 1, Akbar Road which was a bungalow adjoining her residence. In fact the two bungalows had been rolled into one by a campus with a cemented pathway about 8 ft. wide leading from the residence to the office and separated by a sentry gate which has been referred to as the TMC Gate and a sentry booth nearby. Smt. Indira Gandhi had gone on a tour to Orissa and returned to New Delhi on the night of 30 October 1984. At about 9 a.m. on the fateful day i.e., 31 October 1984 Smt. Gandhi left her residence and proceeded towards the office along the cemented path. When she approached the TMC Gate and was about 10 or 11 ft. away therefrom she was riddled with a spray of bullets and she fell immediately. She was removed to All India Institute of Medical Sciences ('AIIMS' for short) but to no avail. A wireless message about the occurrence was received at 9.23 a.m. by the Wireless Operator Head Constable Ram Kumar PW38 at Tuglak Road Police Station having jurisdiction over the place of occurrence. The Duty Officer PW1 deputed Sub-Inspector Vir Singh PW20 and Constable Mulak Raj to visit the spot at once. They were soon joined by the Station House Officer Inspector Baldev Singh Gill PW21. These persons roped off the area of occurrence to isolate it, placed it in charge of Constable and then proceeded to AIIMS.

In the meanwhile it was decided to entrust this investigation to Rajendra Prasad Kochhar PW73 then Inspector in the Homicide squad of the Crime Branch of Delhi Police. However, as is only to be expected having regard to the circumstances, the Government soon decided to constitute a Special Investigation Team (SIT) to pursue the investigation. On 9 November

1984 the Delhi Administration issued two notifications. By one of these in exercise of powers under s. 7(1) of Delhi Police Act, S. Anandram, IPS was appointed as an Additional Commissioner of Police and was declared for the purpose of s. 36, Cr. PC to be a Police Officer superior in rank to an Officer-in charge of a police station. By the other notification issued in exercise of the powers conferred under s. 7(2)(b) of the Police Act, Anandram was authorised to exercise all the powers and perform all the duties of Commissioner of Police in relation to this case and any other offences connected thereto. The notification shows that a copy of each of them is forwarded for publication to the Delhi Gazette. Sometime later on 22 December 1984 the Administration in exercise of powers under s. 8(1) of the Police Act appointed Des Raj Kakkar and M.S. Sharma as Deputy Commissioner of Police and Assistant Commissioner of Police respectively designating them as officers superior to an Officer in charge of a police station and placed their services at the disposal of Shri Anandram. We understand that Shri R.P. Kapoor was named as the Chief Investigative Officer but it was Mr. Kochhar who was closely associated with the investigation throughout except for a short period between 15 November 1984 when the SIT assumed charge and 27 November 1984 when his services were lent to SIT and he is an important witness of the prosecution so far as investigation in concerned.

Shri Kochhar reached AIIMS at about 10 a.m. and at 11.25 a.m. on 31 October 1984 he sent at the Tuglak Road Police Station through Shri Vir Singh, PW20, a report on the basis of which first information report (FIR) for a cognizable offence punishable under ss. 307 & 120-B, IPC and ss. 25, 27, 54 and 59 of the Arms Act was registered at the police station. The report was based on the statement of Narain Singh, PW9, a Head Constable deputed on duty at Smt. Indira Gandhi's residence, recorded by Shri Kochhar at AIIMS. Narain Singh who was accompanying Smt. Gandhi at the time of shooting and claimed to be a witness of the occurrence had stated as follows. This statement made by Narain Singh in the First Information Report brings out the important facts leading to the offence and this part of the statement as quoted by the High Court reads:

> When we were about 10-11 ft. away from the gate of 1, Safdarjung Road and 1, Akbar Road, I noticed Beant Singh SI on duty at TMC Gate and in the adjoining sentry booth, Constable Satwant Singh, 2nd Bn. in uniform armed with a stengun was on duty. When Smt. Indira Gandhi reached near the sentry booth, Beant Singh, SI took out his service revolver from his right dub and immediately started firing bullets at Smt. Indira Gandhi. At the same time Constable Satwant Singh also fired shots at Smt. Indira Gandhi with his stengun. As a result of firing of bullets at the hands of the aforesaid two persons Smt. Indira Gandhi sustained injuries on her front and fell down on the ground, Sh. Rameshwar Dayal ASI has also received bullet injuries due to the firing made by the aforesaid two persons. I threw the umbrella. Shri Beant Singh SI and Constable Satwant Singh were secured with the assistance of Shri B.K. Bhatt, AGP PSO in ITBP personnel. The arms of these two persons fell down on the spot itself. Thereafter I went to call Dr. R. Obey. In the meantime the car, doctor and the other officials reached the place of occurrence and Smt. Indira Gandhi was removed to AIIMS and was got admitted there. Shri B.K. Bhatt, Shri R.K. Dhawan, Shri Nathu Ram, Sh. Lavang Sherpa and Shri Rameshwar Dayal ASI had witnessed the occurrence. Beant Singh SI and Constable Satwant Singh in furtherance of their common objects have fired shots at Smt. Indira Gandhi and have caused injuries on her person with an intention to kill her. It is learnt that Beant Singh SI and Constable Satwant Singh had also sustained bullet injuries at the hands of ITBP personnel. Legal action may please be taken against them.

Upon receiving the news about the death of Smt. Indira Gandhi, the offence in the FIR was converted from s. 307 to s. 302 and investigation proceeded ahead.

According to the prosecution, Satwant Singh was arrested on 15 November 1984 at Red Fort

where he had been taken after his discharge from the hospital in early hours of the same day. The Chief Justice and the Judges of the Delhi High Court on a request made by Delhi Administration decided to depute and designate Shri S.L. Khanna, Additional Chief Metropolitan Magistrate, Tis Hazari to deal with the remand matter of Satwant Singh in Red Fort, Delhi. Satwant Singh was produced before Shri S.L. Khanna, PW67 on the same day and remanded to the police custody till 29 November 1984. On 29 November 1984 it was said that Satwant Singh wanted to make a confession and he was produced before Shri Khanna. Shri Khanna, however, gave him time to think over till 1 December 1984 and remanded him to judicial custody in Tihar Jail. It appears that thereafter the Delhi Administration again made a request to the Delhi High Court and the Delhi High Court authorised Shri S.L. Khanna by order dated 1 December 1984 to hold remand proceedings in Tihar Jail on 1 December 1984 and on subsequent dates. It also appears that Shri G.P. Tareja who was the link Magistrate of Shri. S.L. Khanna had gone on long leave and by an order dated 1 December 1984, Shri Bharat Bhushan Gupta, PW1 was appointed as a link Magistrate in this case. In the light of these orders Satwant Singh was produced before Shri Khanna on 1 December 1984 in the Jail. He passed on the papers to Shri Bharat Bhushan Gupta and later recorded a confession from Satwant Singh on the same day which is Ex. 11G.

One Kehar Singh said to be an uncle (Phoopha) of Beant Singh working as an assistant in the office of the Director General of Supplies and Disposals was claimed to have been arrested on 30 November 1984. He was produced before Shri Khanna on 1 December 1984 who remanded him to police custody till 5 December 1984. He is said to have made a statement on 3 December 1984 in pursuance of which some incriminating articles were seized at his house and from a place pointed out by him. He was again produced on 5 December 1984 before Shri S.L. Khanna who remanded him to judicial custody till 15 December 1984 pending further investigation.

Balbir Singh, a Sub-Inspector posted for security duty at Smt. Gandhi's office is said to have been arrested on 3 December 1984. It is said that certain incriminating material was found on his person when searched at the time of his arrest. On 4 December 1984 at the request of Delhi Administration the High Court empowered Shri S.L. Khanna to deal with the remand matter of these persons accused in the assassination case of Prime Minister. Balbir Singh was therefore produced before Shri S.L. Khanna on 4 December 1984 and was remanded to the police custody till 6 December 1984. On 6 December 1984 an application was filed before Shri S.L. Khanna which stated that Balbir Singh wanted to make a confession. The matter was sent by Shri S.L.Khanna to Shri Bharat Bhushan Gupta. After two appearances before Shri Bharat Bhushan, Balbir Singh finally refused to make statement confessional or otherwise.

In the meantime the police had recorded certain statements one of Amarjit Singh PW44 who was also a Police Officer ASI on duty at the PM's residence. These statements have been recorded on 24 November 1984 and 19 December 1984. The police requested the Magistrate Shri Bharat Bhushan to record a statement of Amarjit under s. 164, Cr. PC. That was accordingly recorded as PW44A.

Beant Singh had died as a result of injuries sustained by him and referred to by Narain Singh in his statement in the FIR itself. A report under s. 173, Cr. PC. hereto referred to as the chargesheet was filed on 11 December 1985 in the Court of Shri S.L. Khanna against Satwant Singh who had survived after a period of critical illness from his injuries and the two other persons referred to above namely Balbir Singh and Kehar Singh. There three persons were accused of an offence under ss. 120-B, 109 and 34 read with 302, IPC and also for substantive offences under ss. 302 & 307, IPC and ss. 27, 54 and 59 of the Arms Act.

This report also mentions Beant Singh as one of the accused persons but since he had died the charges against him were said to have abated.

The prosecution case at the trial was that in June 1984 the armed forces of the Indian Union took action which is described generally as 'Operation Bluestar' under which armed forces personnel entered the Golden Temple Complex at Amritsar and cleared it of the terrorists. In this operation it is alleged that there was loss of lives and properties as well as damage amongst other things to the Akal Takht in the Golden Temple Complex. As a result of this Operation the religious feelings of the members of the Sikh community were greatly offended. According to the prosecution, all the four accused persons mentioned in the charge-sheet, who were Sikhs by faith have been expressing their resentment openly and holding Smt. Indira Gandhi responsible for the action taken at Amritsar. They had met at various places and at various times to discuss and to listen inflammatory speeches and recording calculated to excite listeners and provoke them to retaliatary action against the decision of the Government to take army action in Golden Temple Complex. The resentment led them ultimately to the incident of 31 October 1984 and to become parties to a criminal conspiracy to commit an illegal act namely to commit the murder of Smt. Indira Gandhi. In pursuance of the above conspiracy accused has committed the following acts. This report (charge-sheet) stated facts against each of the accused persons which have been quoted by the High Court in its judgment:

(i) Accused Kehar Singh, a religious fanatic, after the 'Bluestar Operation' converted Beant Singh and through him Satwant Singh to religious bigotry and made them undergo 'Amrit *Chhakna* Ceremony' on 14 October 1984 and 24 October 1984 respectively at Gurudwara Sector VI, R.K. Puram, New Delhi. He also took Beant Singh to the Golden Temple on 20 October 1984 where Satwant Singh was to join them as part of the mission.

(ii) Since the 'Bluestar Operation' Balbir Singh was planning to commit the murder of Smt. Indira Gandhi and discussed his plans with Beant Singh, who had similar plans to commit the offence. Balbir Singh also shared his intention and prompted Satwant Singh to commit the murder of Smt. Indira Gandhi and finally discussed this matter with him on 30 October 1984.

(iii) In the first week of September 1984, when a falcon (baaz) happened to sit on a tree near the main reception of PM's house, at about 1.30 p.m. Balbir Singh spotted the falcon, called Beant Singh there and pointed out the falcon. Both of them agreed that it had brought the message of the Tenth Guru of the Sikhs and that they should do something by way of revenge of the 'Bluestar Operation'. Both of the above accused performed *ardas* then and there.

(iv) In pursuance of the aforesaid conspiracy, Beant Singh and Satwant Singh who had prior knowledge that Smt. Indira Gandhi was scheduled to pass through the TMC Gate on 31 October 1984 at about 9 a.m. for an interview with an Irish television team, manipulated their duties in such a manner that Beant Singh would be present at the TMC Gate and Satwant Singh at the TMC sentry booth on 31 October 1984 between 7 and 10 a.m. Beant Singh managed to exchange his duty with SI Jai Narain (PW7) and Satwant Singh arranged to get his duty changed from Beat No. 4 at PM's house to TMC sentry booth situated near the latrine by misrepresenting that he was suffering from dysentery. Beant Singh was armed with a revolver (No. J-296754, Butt No. 140) which had 18 cartridges of 38 bore and Satwant Singh was armed with a SAF carbine (No. WW-13980 with Butt No. 80) and 100 cartridges of .9 mm. Both having managed to station themselves together near the TMC Gate on 31 October 1984, at about 9.10 a.m., Beant Singh opened fire from his revolver and Satwant Singh from his carbine at Smt. Indira Gandhi as she was approaching the TMC Gate. Beant Singh fired five rounds and Satwant Singh 25 shots at

her from their respective weapons. Smt. Indira Gandhi sustained injuries and fell down. She was immediately taken to the AIIMS where she succumbed to her injuries the same day. The cause of death was certified upon a post-mortem which took place on 31 October 1984, as haemorrhage and shock due to multiple fire arm bullet injuries which were sufficient to cause death in the ordinary course of nature. The post-mortem report No. 1340/84 of the AIIMS also opined that injuries Nos. 1 and 2, specified in the report, were sufficient to cause death in the ordinary course of nature, as well.

In this report (charge-sheet) it was also mentioned that Beant Singh and Satwant Singh laid down their weapons on the spot which had been recovered. About five empties of Beant Singh's revolver were recovered and 13 live cartridges. .38 bore from his person, 25 empties of SAF carbine and 6 lead pieces were recovered from the spot. About 75 live cartridges of .99 SAF carbine were recovered from the person of Satwant Singh. That two lead pieces were recovered from the body of Smt. Indira Gandhi during the post-mortem and two from her clothes and that the experts have opined that the bullets recovered from the body and found from the spot were fired through the weapons possessed by these two accused persons. The report also mentioned that Rameshwar Dayal ASI who was following Smt. Indira Gandhi, PW10 also received grievous and dangerous injuries on his left thigh as a result of shots fired by the accused which according to the medical opinion were grievous and dangerous to life.

It is significant that in this case the Additional Sessions Judge who tried the case was nominated by the High Court for trial of this case and on this count some arguments were advanced by the learned Counsel for the appellants. I will examine the contentions a little later. Learned Counsel appearing for appellants Kehar Singh and Balbir Singh first raised some preliminary objections about the procedure at the trial. The first contention raised by him was about the venue of the trial and the manner in which this venue was fixed by the Delhi High Court by a notification under s. 9(6) Cr. PC.

The second objection was about the trial held in jail and it was contended that under art. 21 of the Constitution of India, open and public trial is one of the constitutional guarantees of a fair and just trial and by holding the trial in the Tihar Jail this guarantee has been affected and accused have been deprived of a fair and open trial as contemplated under s. 327, Cr. PC. The other objection raised was that under s. 327, Cr. PC. it is only the trial Judge, the Sessions Judge who could for any special reasons hold the trial in camera or a part of the trial in camera but there is no authority conferred under that section on the High Court to shift trial in a place where it ultimately ceases to be an open trial. Learned Counsel on this ground referred to series of decisions from United States, England and also from our own Courts and contended that the open trial is a part of the fair trial which an accused is always entitled to.

The other question raised by the learned Counsel for the appellants was that by preventing the accused from getting the papers of the **Thakkar Commission**, its report and statements of persons recorded, who are prosecution witnesses at the trial the accused have been deprived of substantial material which could be used for their defence.

These main questions were raised by the Counsel appearing for Kehar Singh and Balbir Singh and Counsel for Satwant Singh adopted these arguments and in addition raised certain preliminary objections pertaining to the evidence of post-mortem, ballastics expert and similar matters.

Learned Additional Solicitor General appearing for the respondent replied to some of the legal arguments and also the other arguments on facts. One of the preliminary objections sought to be raised by the learned Additional Solicitor General was that this Court in an

appeal under art. 136 of the Constitution of India is not expected to interfere with findings of facts arrived by the two Courts below. He also relied on some decisions of this Court to support his contention.

On the preliminary objection raised by the Additional Solicitor General that in this appeal under art. 136, we are not expected to go into the facts of the case, we will like to observe that we are dealing with a case where the elected leader of our people, the Prime Minister of India was assassinated and who was not only an elected leader of the majority but was very popular with the people, as observed also by the High Court in its judgment but still we have all through maintained the cardinal principle of our Constitution - equality before law and the concept of rule of law in the system of administration of justice. Although these accused persons indicated at some stage that they are not able to engage Counsel but still they could get the services of Counsel of their choice at the State expense, it must be said to the credit of the learned Counsel Shri Ram Jethmalani and Shri R.S. Sodhi that they have done an excellent job for the appellants and therefore we will like to thank these Counsels and also the Additional Solicitor General, who all have rendered assistance to this Court.

In view of the importance of the case, we have heard the matter at some length both on questions of law and also on facts.

The first objection raised by the learned Counsel is on the basis of s. 194 that it was not necessary for the High Court to have allotted the case to a particular Judge. The learned Judges of the High Court in their judgment have come to the conclusion that the last part of the section refers to "The High Court may by special order direct him to try" and on the basis of this phrase the High Court in the impugned judgment, has observed that it was even open to the accused to make an application and to get the case transferred or allotted to a Judge. s. 194, Cr. PC. reads:

> Additional and Assistant Sessions Judge to try cases made over to them - An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

The first part of the section clearly provides that the Sessions Judge of the Division by general or special order is supposed to allot cases arising in a particular area or jurisdiction to be tried by Additional or Assistant Sessions Judges appointed in the division but the last part of this section also authorises the High Court to allot the case to a particular Judge keeping in view the fact that in certain cases the Sessions Judge may not like to allot and may report to the High Court or either of the parties may move an application for transfer and under these circumstances it may become necessary for the High Court to allot a particular case to a particular Judge. Thus, this objection is of no consequence. The other objection which has been raised by the learned Counsel is about the issuance of a notification by the High Court under s. 9(6), Cr. PC. and by this notification the High Court purported to direct that the trial in this case shall be held in Tihar Jail. Learned Counsel appearing for the Delhi Administration on the other hand attempted to justify such an order passed by the High Court by contending that if the High Court had the authority to issue notification fixing the place of sitting it was open to the High Court also to fix the place of sitting for a particular case whereas emphasis by learned Counsel for the appellants was that s. 9(6) only authorises the High Court to fix the place of sitting generally. So far as any particular case is concerned, the second part of sub-clause 6 permits the trial Court with the consent of parties to sit at any other place than the ordinary place of sitting.

The High Court in the impugned judgment have attempted to draw from proviso which has

been a local amendment of Uttar Pradesh. Unfortunately nothing could be drawn from that proviso as admittedly that is not a State amendment applicable to Delhi. s. 9(6), Cr. PC. nowhere permits the High Court to fix the venue of a trial of a particular case at any place other than the place which is notified as the ordinary place of sitting. It reads thus:

> s. 9(6); The Court of Sessions shall ordinarily hold its sitting at such place or places, as the High Court may, by notification, specify but, if in any particular case, Court of Sessions is of an opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the Sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

On the basis of this language one thing is clear that so far as the High Court is concerned it has the jurisdiction to specify the place or places where ordinarily a Court of Sessions may sit within the division. So far as any particular case is to be taken at a place other than the normal place of sitting it is only permissible under the second part of sub-clause with consent of parties and that decision has to be taken by the trial Court itself. It appears that seeing the difficulty the Uttar Pradesh amended the provision further by adding a proviso which reads:

> Provided that the Court of Sessions may hold, or the High Court may direct the Court of Sessions to hold, its sitting in any particular case at any place in the Sessions division, where it appears expedient to do so for considerations of internal security or public order, and in such cases, the consent of the prosecution and accused shall not be necessary.

But it is certain that if this proviso is not on the statute book applicable to Delhi, it cannot be used as the High Court has used to interpret it. That apart, if we look at the notification from a different angle the contention advanced by the learned Counsel for the appellants ceases to have any force. Whatever be the terms of the notification, it is not disputed that it is notification issued by the Delhi High Court under s. 9, sub-clause (6), Cr. PC. and thereunder the High Court could do nothing more or less than what it has the authority to do. Therefore, the said notification of the High Court could be taken to have notified that Tihar Jail is also one of the places of sitting of the Sessions Court in the Sessions division ordinarily. That means apart from the two places Tis Hazari and New Delhi, the High Court by notification also notified Tihar Jail as one of the places where ordinarily a Sessions Court could hold its sittings. In this view of the matter, there is no error if the Sessions trial is held in Tihar Jail after such a notification has been issued by the High Court.

The next main contention advanced by the Counsel for the appellants is about the nature of the trial. It was contended that under art. 21 of the Constitution a citizen has a right to an open public trial and as by changing the venue the trial was shifted to Tihar Jail, it could not be said to be an open public trial. Learned Counsel also referred to certain orders passed by the trial Court wherein it has been provided that representatives of the Press may be permitted to attend and while passing those orders the learned trial Judge had indicated that for security and other regulations it will be open to Jail authorities to regulate the entry or issue passes necessary for coming to the Court and on the basis of these circumstances and the situation as it was in Tihar Jail it was contended that the trial was not public and open and therefore on this ground the trial vitiates. It was also contended that provisions contained in s. 327, Cr. PC. clearly provides that a trial in a criminal case has to be public and open except if any part of the proceedings for some special reasons to be recorded by the trial Court, could be in camera. It was contended that the High Court while exercising jurisdiction under s. 9(6) notified the place of trial as Tihar Jail, it indirectly did what the trial

Court could have done in respect of particular part of the proceedings and the High Court has no jurisdiction under s. 327 to order trial to be held in camera or private and in fact as the trial was shifted to Tihar Jail it ceased to be open and public trial. Learned Counsel on this part of the contention referred to decisions from American Supreme Court and also from House of Lords. In fact, the argument advanced has been on the basis of the American decisions where the concept of open trial has developed in due course of time whereas so far as India is concerned here even before the 1973 Code of Criminal Procedure and even before the Constitution our criminal practice always contemplated a trial which is open to public.

In fact, the High Court in the impugned judgment was right when it referred to the concept of administration of justice under the old Hindu Law. But apart from it even the Criminal Procedure Code as it stood before the amendment had a provision similar to s. 327 which was s. 352 of the old Code and in fact it is because of this that the criminal trial is expected to be open and public that in our Constitution phraseology difference from the United States has been there. art. 21 provides:

> No person shall be deprived of his life or personal liberty except according to procedure established by law.

It is not disputed that so far as this aspect of open trial is concerned the procedure established by law even before our Constitution was enacted was as is provided in s. 327, Cr. PC. (s. 352 of the old Code):

> Court to be open - (1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:
>
> Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court.
>
> (2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape of an offence under ss. 376, 376A, 376B, 376C or 376D of the Indian Penal Code shall be conducted in camera:
>
> Provided that the presiding Judge may, if he thinks, fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remains in, the room or building used by the Court.
>
> (3) Where any proceedings are held under sub-section (2) it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.

This was s. 352 in the Code of Criminal Procedure which was Act of 1898. It will be interesting to notice the language of s. 327. It speaks that any place where a Criminal Court holds its sitting for enquiry or trial shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them. The language itself indicates that even if a trial is held in a private house or is held inside Jail or anywhere no sooner it becomes a venue of trial of a criminal case it is deemed to be in law an open place and everyone who wants to go and attend the trial has a right to go and attend the trial except the only restriction contemplated is number of persons which could be contained in the premises where the Court sits. It appears that the whole argument advanced on behalf of the appellants is on the basis of an assumption inspite of the provisions of s. 327 that as the trial was shifted from the ordinary place where the Sessions Courts are sitting to Tihar

Jail it automatically became a trial which was not open to public but in our opinion in view of s. 327 this assumption, the basis of the argument itself is without any foundation and cannot be accepted and argument on the basis of the foreign decisions loses all its significance. So far as this country is concerned the law is very clear that as soon as a trial of a criminal case is held whatever may be the place it will be an open trial. The only thing that it is necessary for the appellant is to point out that in fact it was not an open trial. It is not disputed that there is no material at all to suggest that any one who wanted to attend the trial was prevented from so doing or one who wanted to go into the Court room was not allowed to do so and in absence of any such material on actual facts all these legal arguments lose their significance. The authorities on which reliance were placed are being dealt with elsewhere in the judgment.

Learned Additional Solicitor General attempted to contend that this is not a question of any constitutional right under art. 21 and the basis of his argument was that art. 21 only talks of procedure established by law and if today on the statute book there is s. 327, tomorrow s. 327 may be so amended that it may not be necessary for a criminal trial to be open and on this basis, learned Additional Solicitor General attempted to contend that it does not become a constitutional right at all. It is very clear that art. 21 contemplates procedure established by law and in my opinion the procedure established by law was as on the day on which the Constitution was adopted and therefore it is not so easy to contend that by amending the Criminal Procedure Code the effect of the procedure established by law indicated in art. 21 could be taken away. The trend of decisions of this Court has clearly indicated that the procedure must be fair and just. Even expeditious trial has been considered to be a part of guarantee under art. 21 but in my opinion so far as the present case is concerned it is not necessary to go so far. At present no one could dispute that the procedure established by law as indicated in art. 21 is as provided in s. 327 and unless on facts it is established that what is provided in s. 327 was prevented or was not permitted, it could not be said that merely because trial was held at a particular place it could be said to be a trial which was not open to public. As indicated earlier on facts there is nothing to indicate although learned Counsel also attempted to some extent to suggest that there were restrictions. A person had to pass through two gates, a person had to sign on the gate and had to have a pass or a clearance but in the modern times especially in the context of the circumstances as they exist. On this basis it could not be said that it ceased to be a public trial. It could not be doubted that at one time in this Court the highest Court of the land, any one could freely walk in and sit and attend the Court but today even in this Court there are restrictions and one has to pass through those restrictions but still it could not be said that any one is prevented from attending the Court and therefore merely suggesting the difficulties in reaching the jail will not be enough. On the other hand, learned Additional Solicitor General drew our attention to the plan of the jail and the situation of the premises where the trial was held and it is not disputed that it was not that part of the jail where the prisoners are kept but was the office block where there was an approach, people were permitted to reach and the trial was held as if it was held in an ordinary place and it is in this view that as I observed earlier that in fact what the High Court did by issuing a notification under s. 9(6) was not to fix place of trial of this particular case in Tihar Jail. But what could be understood is that High Court by notification made Tihar Jail also as one of the places where a Session's Court could ordinarily sit and in this case therefore the trial was held at this place. As soon as a trial is held whatever the place may be the provisions of s. 327 are attracted and it will be an open Court and every citizen has a right to go and unless there is evidence or material on record to suggest that on the facts in this particular case public at large was not permitted

to go or some one was prevented from attending the trial or that the trial was in camera. In fact without an appropriate order it could not be said that what is contemplated under s. 327 or under art. 21 was not made available to the accused in this case and therefore it could not be contended that there is any prejudice at the trial.

There remains however one more question which was raised by the Counsel for the appellants that inspite of the prayer made by the accused person during the trial and also in the High Court about the copies of the statements of witnesses who have been examined by the prosecution and were also examined before the Commission (Thakkar Commission) to be provided to the accused so that they may be in position to use these statements for purposes of contradiction or for other purposes. They had also prayed for the copy of the Thakkar Commission report as the Thakkar Commission was inquiring into the events which led to the assassination of the Prime Minister. In fact, it was contended that the terms of reference which were notified for the enquiry of the Thakkar Commission were more or less the same questions which fell for determination in this case and thus the appellants have been prejudiced and they could not avail of the material which they could use to build up their defence. According to learned Counsel not only the accused are entitled to previous statements of witnesses who are examined by the prosecution but they are also entitled to any material on the basis of which they could build up their defence and raise appropriate issues at the trial. Learned Counsel relied on number of decisions and also said that the decision of the Supreme Court in *Dalmia's* case is not binding as in that case the scope of s. 6 of the Commission of Enquiry Act was not in question.

Whereas learned Counsel for the respondent, the Additional Solicitor General vehemently contended that the language of s. 6 is clear that a witness who is examined before a Commission, is protected and that protection is such which clearly indicates that this statement made before the Commission could not be used against him for any other purpose in any other proceeding either civil or criminal. The only exception carved out in s. 6 pertains to his prosecution for perjury and therefore when the language is clear and the exception carved out is clear enough, no other exception could be carved out nor the section could be interpreted in any manner. According to the Additional Solicitor General the Commission by its regulation and notification clearly made that enquiry a confidential affair and in addition to that there was an amendment of the Act by Ordinance which even provided that if Government by notification decided not to place the Report of the Commission before the House of Parliament or Legislature then it was not necessary that it should be so placed before the House and thus the report not only was confidential but even the Parliament had no right to see the report and therefore neither the report nor the statements made before the Commission could be asked for by the accused for the purposes of trial.

Soon after the assassination of Smt. Indira Gandhi, the Government of India by notification dated 20 November 1984 constituted a Commission under the Commission of Enquiry Act 1952 (the Act). The Commission was presided over by Mr. Justice M.P. Thakkar, a sitting Judge of this Court. The terms of enquiry notified for the Committee reads:

(a) the sequence of events leading and all the facts relating to the assassination of late Prime Minister;

(b) whether the crime could have been averted and whether there were any lapse or dereliction of duty in this regard on the part of any one of the commissions of the crime and other individuals responsible for the security of the late Prime Minister;

(c) the deficiencies, if any, in the security system and arrangements as prescribed or as operated to impractice which might have facilitated the commission of the crime;

(d) the deficiencies, if any, in the procedure and measures as prescribed, or as operated in practice in attending to any providing medical attention to the late Prime Minister after the commission of the crime; and whether was any lapse or dereliction of duty in this regard on the part of the individuals responsible for providing such medical attention;

(e) whether any person or persons or agencies were responsible for conceiving, preparing and planning the assassination or whether there was any conspiracy in this behalf, and if so, all its ramifications.

The Commission was also asked to make recommendations as to corrective remedies and measures that need to be taken for future.

It is therefore clear that out of these terms of reference the first term (a) and the last one (e) are such that the evidence collected by the Commission could be said to be relevant for the purposes of this trial.

It is significant that the Commission framed regulations under s. 8 of the Act in regard to the procedure for enquiry the reg. 8 framed therein reads:

> In view of the sensitive nature of enquiry the proceedings will be in camera unless the Commission directs otherwise.

This Regulation made it clear that the proceedings of the Commission will be ordinarily in camera. It would only be in public if the Commission so directs and it is not disputed that so far as recording of evidence is concerned and the proceedings of the Commission it has gone on in camera throughout and even the report, interim and the final report. And then also it was stated by the Commission itself to be confidential. In this perspective the prayer of the appellants has to be considered.

Under the Act as it stood before the amendment which was done by Ordinance No. 6 of 1986 normally the Government was supposed to place the report of the Commission under s. 3, sub-clause 4 of the Act before the House of the People within six months of the submission of the report by the Commission but the Government did not do that. The steps were taken to amend the Commission of Enquiry Act and on 14 May 1986 the President of India promulgated an Ordinance No. 6 of 1986 namely Commission Enquiry (Amendment) Ordinance 1986 by which sub-section 5 and 6 were introduced to s. 3 as follows:

> Sub-clause 5: The provisions of sub-section 4 shall not apply if the appropriate Govt. is satisfied then in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or in public interest, it is not expedient to lay before the House of the people, or as the case may be, the Legislative Assembly of the state, the report, or any part thereof, of the Commission. On the enquiry made by the Commission under sub-section (1) and issue a notification to that effect in the official gazette.
>
> (6) Every notification issued under sub-section (5) shall be laid before the House of the People, as the case may be, the Legislative Assembly of the state, if it is sitting as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its resuming and the appropriate Govt. shall seek the approval of the House of the People, or as the case may be, the Legislative Assembly of the state to the notification by a resolution moved within a period of 15 days beginning with the day on which the notification is so laid before the house of the people or as the case may be the Legislative Assembly of the state makes any modification in the notification or directs that the notification should cease to have effect.

The notification shall thereafter have effect as the case may be.

In pursuance of this amendment of 15 May 1986 the Central Government issued a notification under sub-section (5) of s. 3 stating

> The Central Government, being satisfied that it is not expedient in the interest of the security of the state and in public interest to lay before the house of the people, the report submitted to the Government on 19 November 1985 and 27 February 1986, by Justice M.P. Thakkar, a sitting Judge of the Supreme Court of India appointed under the notification of the Government of India, in the Ministry of Home Affairs No. SO 867(B), dated 20 November 1984 thereby notifies that the said report shall not be laid before the house of the people.

It is interesting that on 20 August 1986, Ordinance No. 6 was replaced by Commission of Enquiry (Amendment) Act 1986 (Act No. 36 of 1986) with retrospective effect. The said notification dated May 1986 was also got approved by the house of the people as required under sub-section 6 of s. 3 and therefore after the approval of the notification by the house of the people there remains no question of placing the report of the Commission before the House.

So far as the steps taken by the appellants are concerned, it is no doubt true that an appropriate application in the manner in which it was moved in the High Court was not moved in the trial Court but it could not be doubted that one of the accused persons had even sought these copies in the trial Court and the same prayer has been appropriately made during the hearing in the High Court. The proper time for awarding the prayer was in the trial Court during the pendency of the trial as the accused wanted the copies of the previous statements of some of the prosecution witnesses which were recorded during the enquiry before the Thakkar Commission but such a prayer was made and rejected.

The High Court rejected this prayer by the impugned judgment against which the present appeal is before us. The High Court relied on the decision of this Court in the case of *Ram Krishnan Dalmia v. Justice Tendulkar* [1959] SCR 279, which is referred to henceforth as *Dalmia's* case. It was contended by learned Counsel for the appellants that this case could not be accepted as an authority on interpretation of s. 6 as in that case the scope of s. 6 was not before the Court but it was the validity of the provisions which was challenged. Das, C.L. in *Dalmia's* case while examining the challenge to the validity of the Act and the notification issued thereunder made the following observations:

> The whole purpose of setting up of a Commission of Enquiry consisting of experts will be frustrated and the elaborate process of enquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures and situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view, the recommendations of a Commission of Enquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. From this point of view, there can be no objection even to the Commission of Enquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquent in future. But seeing that the Commission of Enquiry has no judicial powers and its report will purely be recommendatory and not effective proprovigro.

The statement made by any person before the Commission of Enquiry under s. 6 of the Act is wholly inadmissible in evidence in any future proceedings civil or criminal.

According to learned Counsel, in that case it was not the scope of s. 6 but the validity of the provisions was in question and the observations were only incidental and it can not be regarded as a binding precedent. The High Court has accepted these observations of this Court in the judgment quoted above and in our opinion rightly. But apart from it, we shall try to examine s. 6 itself and other provisions relevant for the purpose as to whether the appellants i.e., the accused before the trial Court were entitled to use the copies of the statement of those prosecution witnesses who were examined before the Thakkar Commission for purposes of cross-examination or to use the report of the Commission or whether it could be handed over or given over to the accused for whatever purpose they intended to use. The learned Counsels for the parties on this aspect of the matter have referred to a number of decisions of various High Courts and also some of the decisions of the English Courts. They are being dealt with in the judgment elsewhere as in my opinion it is not necessary to go into all of them except examining the provisions of the Act itself.

Section 6 of the Commission of Enquiries Act reads:

> No statement made by any person in the course of giving evidence before the Commission shall subject him to, or be used against him in any civil or criminal proceedings except a prosecution for giving false evidence by such statement.

On analysis of the provision, it will be found that there are restrictions on the use of a statement made by a witness before the Commission. First is "Shall subject him to, ... any civil or criminal proceedings except a prosecution for giving false evidence by such statement." This, in my opinion, is the first restriciton. The second restriction, according to me, is spelt out from the words "or be used against him in any civil or criminal proceedings." Thus if we examine the two restrictions stated above it appears that a statement given in a Commission cannot be used to subject the witness to any civil or criminal proceedings nor it can be used against him in any civil or criminal proceedings and in my opinion it is in the context of these restrictions that we will have to examine the provisions of the Evidence Act which permit the use of a previous statement of a witness and for what purpose. Section 145 read with s. 155(3) and s. 157 are the relevant provisions of the Evidence Act. Section 145 reads:

> Cross-examination as to previous statements in writing. - A witness may be cross examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to these parts of it which are to be used for the purpose of contradicting him.

This provision permits that a witness may be cross-examined as to the previous statement made by him in writing or reduced to writing relevant to the matters in question without such writing being shown to him or being proved. But if it is intended to contradict him by the writing his attention must be drawn to those parts of the writing and it can be proved. A witness could be cross-examined on his previous statement but if a contradiction is sought to be proved then that portion of the previous statement must be shown to him and proved in due course.

Section 155 of the Evidence Act provides for the use of a previous statement to impeach the credit of a witness.

Section 155 reads:

> 155. Impeaching credit of witness. The credit of a witness may be impeached in the following

ways by the adverse party or, with the consent of the Court, by the party who calls him: *a*

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe to be unworthy of credit;

(2) by proof that the witness has been bribed, or has (accepted) the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statement inconsistent with any part of this evidence which is liable to be contradicted; *b*

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

This section provides that the credit of a witness may be impeached in the following ways by an adverse party with the consent of the Court by the party who calls him and the third sub-clause refers to a former statement which is inconsistent with the statement made by the witness in evidence in the case and it is permissible that the witness be contradicted about that statement. The third provision is s. 157 which provides for the use of a previous statement for corroboration. It reads: *c*

157. Former statements of witness may be proved to corroborate later testimony as to same fact. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved. *d*

A perusal of these three sections clearly indicate that there are two purposes for which a previous statement can be used. One is for cross-examination and contradiction and the other is for corroboration. The first purpose is to discredit the witness by putting to him the earlier statement and contradicting him on that basis. So far as corroboration is concerned it could not be disputed that it is none of the purposes of the defence to corroborate the evidence on the basis of the previous statement. Section 145 therefore is the main section under which relief was sought by the accused. The use for which the previous statement was asked for was to contradict him if necessary and if it was a contradiction then the earlier statement was necessary so that contradiction be put to the witness and that part of the statement can be proved. *e* *f*

To my mind, there could be no other purpose for which the appellants could use the previous statements of those witnesses. Contradiction could be used either to impeach his credit or discredit him or to pull down or bring down the reliability of the witness. These purposes for which the previous statements are required could not be said to be purposes which were not against the witnesses. The two aspects of the restrictions which s. 6 contemplates and have been discussed earlier are the only two aspects which could be the result of the use of these statements. I cannot find any other use of such previous statements in criminal proceedings. It is therefore clear that without going into the wider questions even a plain reading of s. 6 as discussed above will prohibit the use of the previous statements at the trial either for the purposes of cross-examination to contradict the witness or to impeach his credit. The only permissible use which has been provided under s. 6 is which has been discussed earlier and therefore the Courts below were right in not granting the relief to the accused. *g* *h*

The report of the Commission was also prayed for although learned Counsel could not clearly suggest as to what use report of the Thakkar Commission could be to the accused in his *i*

defence. The report is a recommendation of the Commission for consideration of the Government. It is the opinion of the Commission based on the statements of witnesses and other material. It has no evidentiary value in the trial of the criminal case. The Courts below were also justified in not summoning the reports.

Learned Counsel for parties referred to a number of decisions, Indian and foreign and are being dealt with by my learned colleague in this judgment. But in view of the discussions above I do not find it necessary to go further into the matter.

Learned Counsel for appellant No. 1 Satwant Singh also made a reference to some of the questions which were raised before the High Court in respect of the post-mortem, although learned Counsel appearing for the other two appellants did not seriously raise those questions. It is apparent that in the facts of the case as the evidence stands the question of post-mortem or a fuller post-mortem was necessary or not loses all its significance. There is no dispute that she died as a result of gun shot injuries which was inflicted by Beant Singh and Satwant Singh, one who shot from his service revolver and other from the carbine. In view of such clear evidence about the cause of the death, the post-mortem examination loses all its significance. It becomes important only in cases where the cause of death is to be established and is a matter of controversy.

Before I go to the merits and deal with the evidence in the case, I will dispose of the preliminary objection raised by the learned Additional Solicitor General as to the scope of the appeals before us. He urged that under art. 136 of the constitution this Court is not expected to go into the questions of fact when there are concurrent findings of fact recorded by the Courts below. The learned Counsel apart from art. 136 relied upon a decision reported in the case of *Pritam Singh v. The State* [1950] AIR SC 169 where Fazal Ali J said:

> It would be opposed to all principles and precedents if we were to constitute ourselves into third Court of fact and after re-weighing the evidence come to the conclusion different from that arrived at by the trial Judge and the High Court.

Similarly in *Ram Raj v. State of Ajmer* [1954] SCR 1133 Justice Mahajan, Chief Justice observed at p. 1134:

> Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice have been done and the case in question presents features of sufficient gravity to warrant a review of decision appealed against, this Court does not exercise its overriding powers under art. 136(1) of the constitution and the circumstances that because the appeal has been admitted by special leave does not entitle the appellant to open out the fact and raise every point which should have been raised in the High Court. Even in the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for.

Even in a recent decision [1983] AIR SC 753 Justice Thakkar stated:

> A concurrent finding of fact cannot be reopened in an appeal unless it is established: that the finding is based on no evidence on record, that the finding is perverse, it being such as no reasonable person would have arrived at even if the evidence was taken at its face value or thirdly, the finding is based and built on inadmissible evidence which evidence if excluded from the vision would negate the prosecution case or substantially discredit or impair it or; fourthly some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded.

These are the principles laid down by this Court and keeping these in view I will attempt to examine the High Court judgment. I may however, mention that where the High Court has

reached conclusion based on partly inadmissible evidence and partly on circumstances which are not justified on the basis of evidence, or partly on facts which are not borne out from the evidence on record it cannot be contended that in an appeal under art. 136 this Court will not go into the facts of the case and come to its own conclusions. The case on hand is one of such cases and some of the findings of fact reached by the High Court could not be said to be such which are concurrent or conclusive. We were therefore put to the necessity of examining the evidence wherever it was necessary.

The other ground urged on behalf of the appellants relates to the relevancy of evidence on conspiracy in view of s. 10 of the Evidence Act. It will be worthwhile to deal with this question of law at this stage.

Sections 120A and 120B of the Indian Penal Code which deal with question of conspiracy. Section 120A reads:

> When two or more persons agree to do or cause to be done:
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement in pursuance thereof.

s. 120A provides for the definition of criminal conspiracy and it speaks of that when two or more persons agree to do or cause to be done an act which is an illegal act and s. 120B provides for the punishment for a criminal conspiracy and it is interesting to note that in order to prove a conspiracy it has always been felt that it was not easy to get direct evidence. It appears that considering this experience about the proof of conspiracy that s. 10 of the Indian Evidence Act was enacted. Section 10 reads:

> Things said or done by conspirator in reference to common design - Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

This section mainly could be divided into two: the first part talks of where there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, and it is only when this condition precedent is satisfied that the subsequent part of the section comes into operation and it is material to note that this part of the section talks of reasonable grounds to believe that two or more persons have conspired together and this evidently has reference to s. 120A where it is provided "When two or more persons agree to do, or cause to be done." This further has been safeguarded by providing a proviso that no agreement except an agreement to commit an offence shall amount to criminal conspiracy. It will be therefore necessary that a *prima facie* case of conspiracy has to be established for application of s. 10. The second part of the section talks of anything said, done or written by any one of such persons in reference to the common intention after the time when such intention was first entertained by any one of them is relevant fact against each of the persons believed to be so conspiring as well for the purpose for proving the existence of the conspiracy as for the purpose of showing that any such person was a party

to it. It is clear that this second part permits the use of evidence which otherwise could not be used against the accused person. It is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in s. 10 in cases of conspiracy. The second part operates only when the first part of the section is clearly established i.e., there must be reasonable ground to believe that two or more persons have conspired together in the light of the language of s. 120A. It is only then the evidence of action or statements made by one of the accused could be used as evidence against the other. In *Sardar Sardul Singh Caveeshar v. State of Maharashtra* [1964] (2) SCR 378, Subba Rao J (as he then was) analysed the provision of s. 10 and made the following observations:

> This section, as the opening words indicate will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be *a prima facie* evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for providing that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after which intention was entertained by any one of them. The expression 'in reference to their common intention' is very comprehensive and it appears to have been designedly used to give it a wider scope than the words 'in furtherance of' in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.' It can be used only for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be issued in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows: (1) There shall be a *prima facie* evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; (5) it can only be used against a co-conspirator and not in his favour.

In the light of these observations and the analysis of s. 10 we will have to examine the evidence led by prosecution in respect of conspiracy.

We first take the case of Balbir Singh. Balbir Singh was an officer of the Delhi Police in the cadre of Sub-Inspector. He was posted on duty at the PM's residence on security. On 31 October 1984 in the morning he was not on duty but his duty was to commence in the evening and on that day at Akbar Road gate it appears that when he reported for duty in the normal course he was asked to go to the Security Police Lines and at about 3 a.m. on 1 November 1984 he was awakened from his sleep and his house was searched by SI Mahipal Singh, PW50, Constable Hari Chand, PW17 and Inspector Shasmsheer Singh. Nothing except a printed book on Sant Bhindrawale Ex. PW17A was recovered. It is alleged that at about 4 a.m. he was taken to Uamuna Velodrome. He was kept there till late in the evening when he

is reported to have been released. This custody in Yamuna Velodrome is described by Shri Kochhar, PW75 as '*de facto* custody'. But there is no evidence or no police officer examined to say that he allowed this accused to go in the evening on 1 November 1984. Thereafter he is alleged to have been arrested on 3 December 1984 at Najafgarh Bus-stand. When his personal search was taken and certain articles were recovered from his possession including a piece of paper which is Ex. PW26B. On 4 December 1984 he was produced before the Magistrate who remanded him to police custody. Thereafter it is alleged that he expressed his desire to make a confession but when produced before the Magistrate he refused to make any statement.

The allegations in the charge-sheet against this accused if summarised are: that Balbir Singh like the other accused persons has expressed his resentment openly holding Smt. Indira Gandhi responsible for the 'Bluestar Operation'. He was planning to commit the murder of Smt. Gandhi and he discussed these matters with Beant Singh deceased who had similar plan to commit the murder. He also shared his intention and prompted accused Satwant Singh to commit the murder of Smt. Gandhi and finally discussed the matter with him on 30 October 1984. In the first week of September 1984 a falcon (baaz) happened to sit on the tree near the reception gate of the Prime Minister's house in the afternoon at about 1.30 p.m. Balbir Singh spotted the falcon and called Beant Singh there. Both of them agreed that it has brought a message of the Tenth Guru of Sikhs that they should do something by way of revenge of the 'Blue Star Operation'. Thereafter they offered '*Ardas*'.

These allegations, the prosecution has attempted to prove by the evidence of the following witnesses:

(i) SI Madan Lal Sharma, PW13.

(ii) Constable Satish Chandra Singh PW52.

(iii) Sub-Inspector Amarjit Singh, PW44 and

(iv) Confession of Satwant Singh, PW11C.

The prosecution also strongly relied upon the document Ex. PW26B which was recovered from the possession of the accused when he was arrested at Najafgarh Bus-stand. His leave applications which are Ex. PW26 E1 to E5 along with his post crime conduct of absconding are also relied upon.

According to the accused, the document Ex. PW26B was not recovered from his possession as alleged by the prosecution. He also contests his arrest at Najafgarh Bus-stand and says that it is just a make-believe arrangement. According to him, he was all along under police custody right from the day when he was taken on Yamuna Velodrome on 1 November 1984. In fact he was not allowed to go out and the question of his abscondence does not arise. He was also not put any question on abscondence under s. 313 examination.

Now, will take first, the arrest of this accused on 1 November. It is not disputed that on 1 November late at night his house was searched and a printed book on Sant Bhindrawale was seized from his house and he was brought to Yamuna Veldrome. It is also not in dispute that the prosecution evidence itself indicates that up to the evening the next day he was seen in the Yamuna Veldrome.

It will be better here to describe what this Yamuna Velodrome is? From the prosecution evidence what has emerged is that this is a place where there are number of offices but

police has reserved a portion of this building to be used for interrogation and investigation. Normally when a person or a witness is brought for interrogation or investigation at a police station, some record has to be made as there is a general diary although diaries may or may not be filled in but a duty is cast on the Station House Officer of a police Station to maintain the movements of the police officers and also to note down the activities especially when it is connected with investigation of an important case. But it appears that all about the preliminary investigation of this case was going on at Yamuna Velodrome, witnesses and persons were brought here, detained or kept, and interrogated. We do not have any further evidence in regard to this place.

According to the prosecution, this accused was at Yamuna Velodrome upto the evening of that day and thereafter he was allowed to go and then he absconded. As a matter of fact this part of the story becomes very important in view of the further facts alleged by the prosecution that the investigating officer got some information through someone that this accused who was wanted would appear at the time and place indicated. But there is no evidence as to who asked this accused to go. He was a suspect in the criminal conspiracy. He could not have gone away of his own accord. Some responsible officer must have taken the decision but it is unfortunate that no officer has been examined to state that "I thought that his presence was not necessary and therefore I allowed him to go". Learned Additional Solicitor General appearing for the state before us also was asked if he could lay his hands at any part of the evidence of any one of the witnesses who could say that before him this person was allowed to go from the Yamuna Velodrome. There is no evidence on this aspect of the matter at all and therefore we are left with the only evidence that this person was arrested at midnight in the late hours on 1 November and was carried to Yamuna Velodrome and was seen there by some prosecution witness till the evening of the next day.

Then the other aspect of the matter which is of some importance is about the prosecution allegation that he was absconding from 1 or 2 November till 3 December 1984. It is significant that no witness has been examined to indicate that he went to find him out either at his residence or at any other place in search of him and that he was not available. There is also no evidence 4 produced to indicate that inspite of the fact that during investigation police wanted to arrest him again but he was not available at his known address. It is perhaps of absence of evidence as to absconding the trial Court when examining this accused under s. 313 did not put to him any question about his abscondence. It is therefore clear that the abscondence as a circumstance could not be used against him.

Let us now examine the story of the prosecution that this accused was arrested at Najafgarh Bus-stand. It is alleged that Sh. Kochhar, the Investigating Officer got some information that this accused was expected to appear at that place on 3 December 1984. It was not immediately after the assassination. It was after a month. The people could come forward to become witnesses. But no independent witness has been examined in support of the arrest or seizure from the accused. It may be as technically argued by the learned Additional Solicitor General that the presence of public witnesses under the scheme of Code of Criminal Procedure is required when there is search and seizure from the house or property of the accused but not when a person is arrested and something is recovered from the personal search. But it is well-known that in all matters where the police wants that the story should be believed they always get an independent witness of the locality so that evidence may lend support to what is alleged by the police officers. Admittedly for this arrest at Najafgarh and for the seizure of the articles from the person of this accused there is no other evidence except the evidence of police officers. Independent witness in this case would be all the more necessary

especially in view of what has been found above as his release after the earlier arrest is not established, and his abscondence is not proved. In such a controversial situation the presence of an independent witness from the pubic, if not of the locality, would have lent some support to the case of the prosecution. It may also be noted that according to Mr. Kochhar, that the accused appeared at the Bus-stand but they have not been able to disclose from where he appeared. Whether he got down from a bus, if so from which bus - city or outstation bus? How he appeared there is all mystery. Nobody bothered to notice of his coming. It is said that he had a DTC bus ticket. Nobody examined it. Perhaps there was nothing to examine. If the police officers had gone with prior information to arrest the absconding accused who was involved in such an important crime, they could have taken an independent witness with them. It is again interesting to note that instead of searching him and performing the formalities of arrest at the place where the accused appeared, he was taken to a place said to be the office of the Electricity Board. The search and seizure took place there. Some articles were recovered from his possession. Most of the articles recovered are mere personal belongings. There was also a piece of paper since marked as Ex. PW26B. The police did not think it necessary to have an independent witness even for the seizure memo, when particularly some important piece of evidence was recovered from his possession.The reply of the learned Additional Solicitor General was that in law it was not necessary. The Investigating Officer when questioned in cross-examination answered that nobody was available or none was prepared to be a witness in this matter. It is unthinkable at a public place and that too at the Bus-stand. Learned Additional Solicitor General also attempted to contend that the circumstances in Delhi after the assassination of the Prime Minister were such that no witness was prepared to come forward. It appears that for every problem, this situation, is brought as a defence but in our opinion, this would not help them so far as this matter is concerned. We are talking of 3 December which was more than a month after the unrest in Delhi. It is very difficult to believe that a citizen in this capital did not come forward to be a witness for seizure memo. The arrest of the accused in the circumstances appears to be only a show and not an arrest in actuality.

Learned Additional Solicitor General appearing for the state frankly conceded that if the release of this accused after his arrest on 1 November is not established and his abscondence is not proved, then the story of his arrest on 3 December with the recovery of the articles loses all its significance. It is indeed so.

In the context of what has been discussed above it is apparent that the arrest of the accused on 3 December and the recovery of these articles from his person have not been proved satisfactorily and therefore could not be of any consequence against this accused.

The prosecution attempted to prove the recovery of Ex. PW26B on the basis of an entry in the Malkana Register of Tuglak Road Police Station. Entry 986 in the Malkana Register which is made on 3 December 1984 according to the learned Additional Solicitor General, contains a verbatim copy of the seizure memo. Ex. PW35A and it indicates the fact of recovery of PW26B and therefore proves that it was recovered from the appellant upon his arrest and search on that day. Here again there is an interesting situation. There is an endorsement in the Malkhana Register stating that the DTC ticket which the accused carried and the paper containing the dates in English Ex. PW26B were not deposited. The Malkana Register therefore is of no help to the prosecution. If they were taken back for any further investigation they could have made an entry to that effect in the general diary. The nature of entry in the Malkana Register only shows the recovery of certain articles and a note that the two documents although are said to be recovered but they were not brought and deposited at

the Tuglak Road Police Station. It is therefore clear that although in the seizure memo the mention of the two documents including Ex. PW26B is there, they in fact did not reach the police station or see the light of the day.

In view of these infirmities we cannot accept that the accused was arrested on 3 December as alleged by the prosecution. So the recovery of Ex. PW26B is doubtful. However, we may refer to the said document as it has been said to be one of the most important pieces of evidence as the High Court has described it.

The document can be taken to have been written in the handwriting of Balbir Singh as that is not seriously contested before us. The document is a sheet of paper in which we find certain entries. The document is reproduced at pp. Nos. 57-58 of the judgment prepared by my learned brother Shetty J.

If this document is considered to be a memorandum of events prepared by this accused relating to his conspiracy, why should he carry it in an atmosphere surcharged with emotion against the Sikhs. Not only that, this person knew that he was an accused in such an important case where whole public opinion is against him. He also knew that he was absconding and he also knew that he was carrying in his pocket such an important piece of evidence. Was it his intention that he should keep it readily available so that he could oblige the prosecution whenever they needed? There is no other possible reason why this person should keep this document with him all the time. On our questioning the learned Additional Solicitor General about this strange behavior of the accused, he also could not explain as to why the accused could have thought of carrying such a piece of paper in his pocket.

Apart from it, if the document is looked at as it is we see nothing in it except a mention of few dates and few events. It even does not indicate that with those events whether this accused was connected in any manner. It is also significant that this document was not with this accused when his house was searched and he was arrested on the night of 1 November 1984. If the accused after that arrest was not released at all and there was no occasion for him to go away then, one fails to understand as to how this document came in his possession? The explanation suggested by the learned Counsel for the accused appears to be the most probable. As indicated from other evidence, the accused was preparing to give a statement or a confession and therefore he was given the notes and he must have recorded those dates to facilitate the statement that he was planning or he was made to give which ultimately he chose not to give at all.

Looking to this document the only material which could be said to be of some significance is the words ‘felt like killing’. But there is no reference after those words as to who was intended to be killed. There is also no indication as to whose feelings are noted in this piece of paper. There are entries in this document which refer to meetings, visits, persons, visiting somebody’s house but it is not clear as to whom they refer and what is intended when these reference is made. Beant Singh has been referred to in this document more than in one place, there is a reference to Beant Singh with eagle. But there is no reference to a joint *Ardas* or this accused or Beant Singh telling that it had brought a message or they should take revenge. The entry does not suggest that the accused has anything to do with eagle. If there is anything, it is against Beant Singh.

A perusal of this whole document also shows that there is no reference at all to Beant Singh and his plan to kill the Prime Minister. Nowhere it is mentioned about the bomb or grenade

with which he was planning to eliminate the Prime Minister before 15 August 1984. There is also no reference about Beant Singh conspiring with this accused or vice-versa. Kehar Singh is not all in the document. Satwant Singh is not at all in the document. Satwant Singh, however, is mentioned against 30 October. But it does not give an indication where? The prosecution has connected it with the evidence of PW52 who was the Sentry in the Prime Minister's security. We will consider the evidence of this witness a little later.

Under these circumstances it is very clear that except the mention of 'Bluestar Operation' and 'felt like killing' there is nothing in this document which is of any significance. If the document is read as it is, we see nothing incriminating against this accused. Unfortunately it appears that the High Court read in this document what was suggested by the prosecution without considering whether it could be accepted or not in the absence of evidence on record. Admittedly, there is no such evidence at all in this case.

Satish Chandra Singh, PW52, who has been produced to prove the meeting of Balbir Singh with Satwant Singh was for the first time examined during the investigation on 7 February 1985 that is after the trial had commenced. He has stated that when he was on duty on 30 October 1984 Satwant Singh came and talked to Balbir Singh. But he frankly admitted that he could not follow what they talked as he did not know Punjabi. What value we could attach to the testimony of this witness. It is impossible to believe him.

In view of what we have noticed, even if the document is accepted to have been written by the accused, still there is nothing in it on the basis of which an inference of conspiracy could be drawn. There must be evidence to indicate that the accused was in agreement with the other accused persons to do the act which was the ultimate object which was achieved on 31 October 1984. This document therefore although described by the learned Judges of the High Court as very important piece of evidence is nothing but a scrap of paper.

Excluding from consideration this recovery of a piece of paper Ex. PW26B, what remains has been analysed by the High Court in the judgment in the following words:

> Summing up then the evidence against Balbir Singh leaving out of account for the time being the confession of Satwant Singh and the evidence of Amarjit Singh the position as an follows:
>
> > He was an officer on security duty at the PM's house. He knew Beant Singh and Satwant Singh as well. He shared the indignation of Beant Singh against Smt. Gandhi for 'Bluestar Operation', and was in a mood to avenge the same. He went on leave on 25 June 1984 to 26 July 1984. On his return he met Beant Singh and Amarjit Singh. He was present on the occasion of the appearance of eagle and their association on that date is borne out by Ex. PW26B. He is known to have talked to Satwant Singh on 30 October 1984.

Unfortunately, the learned Judges of the High Court when came to the conclusion that Balbir Singh knew Beant Singh and Satwant Singh well, they have not referred to any piece of evidence in this case which establishes that they knew each other well. The learned Additional Solicitor General appearing for the state also has not been able to point out any piece of evidence on the basis of which this could be inferred. This accused being a Sikh also is referred to but there were number of Sikh officers posted at the house of the Prime Minister and merely because he was a Sikh it could not be said that he became a party to the conspiracy or he was in conspiracy or he knew Beant Singh and Satwant Singh well. Similarly as regards the observations made by the High Court that Balbir Singh shared indignation of Beant Singh against Smt. Gandhi and was in a mood to avenge for the 'Bluestar Operation', there is no evidence to support it. From the testimony of SI Madan Lal Sharma,

PW30 all that we could gather is that after the 'Bluestar Operation' Balbir Singh was in an agitated mood and he used to say that the responsibility of damaging the Akal Takht lies with Smt. Gandhi and it would be avenged by them. From this it cannot be inferred that Balbir Singh wanted to take revenge against the Prime Minister along with Beant Singh. This is not what is said by the witness. If expression of anger or protest on the 'Bluestar Operation' could be used as a piece of evidence or a circumstance against accused then all that members of the Sikh community who felt agitated over the 'Bluestar Operation' must be held as members of the conspiracy.

So far as taking leave is concerned there is nothing on the basis of which any significance could be attached to it. There is no material to indicate that during the leave Balbir Singh met Beant Singh or any one else or was in any manner connected with the conspiracy or was doing something in pursuance of the agreement of conspiracy between them. Merely because on certain dates he was on leave no inference could be drawn. The High Court relied on the fact that after returning from leave this accused met Beant Singh and Amarjit Singh but on this meeting also there is no other evidence except the evidence of Amarjit Singh PW44 which we will deal with a little later.

So far as appearance of falcon and offering of *Ardas* is concerned it is admitted that appearance of falcon is considered, by the Sikh community, as sacred thing as falcon is supposed to be a representative of the Guru and if therefore this accused and Beant Singh offered *Ardas* nothing could be inferred from this alone. As even the High Court observed that;

> Nothing unusual or abnormal about the incident as any religious Sikh seeing the appearance of a falcon could offer the *Ardas.*

So far as meeting with Satwant Singh is concerned on 30 October 1984 the only evidence of that fact is the evidence of Satish Chandra Singh PW52 about whom I have discussed little earlier and nothing more need be stated here.

With this we are now left with the evidence of Amarjit Singh who is an important witness as per the prosecution. It has come on record that his statement during investigation was recorded thrice; twice by police under s. 161 and then under s. 164, Cr. PC. The first statement is PW44 which was recorded on 24 November 1984, after 25 days of the incident and the second statement PO 44DB was recorded on 19 December 1984. On 21 December 1984 the third statement PW44A under s. 164 of the Code came to be recorded. In the first statement there is no involvement of Balbir Singh. The second statement according to the witness was recorded at his own instance. He states that it did not occur to him that assassination was the handwork of Balbir Singh and Kehar Singh. After he had learnt about the firing and death of Smt. Indira Gandhi he recalled certain things and went to Shri R.P. Sharma who recorded his statement on 24 November 1984. According to him he recalled bit by bit and that was the reason, he gave the subsequent two statements. If we carefully peruse these statements it is clear that the entire approach of the High Court appears to be erroneous. Amarjit Singh PE 44 states before the Court as follows:

> In the first week of August 1984 I had a talk with Beant Singh. Then he told me that he would not let Mrs. Indira Gandhi unfurl the flag on 15 August. Shri Balbir Singh also used to tell me that if he could get a remote control bomb and his children are sent outside India then he also could finish Mrs. Indira Gandhi. I used to think that he was angry and I used to tell him that he should not think in these terms. In the third week of October 1984, Balbir Singh told me that Beant Singh and his family have been to the Golden Temple along with Kehar

Singh her Phoopha. He further told that Beant Singh and Constable Satwant Singh had taken Amrit in sector 6, R.K. Purma, New Delhi at the instance of Kehar Singh.

In his first statement PW44DA which has been exhibited during his cross-examination admittedly there is no reference to Balbir Singh at all. No reference to Balbir Singh telling the witness that if he could get a remote control bomb and his children are sent outside India, he could also finish Mrs. Indira Gandhi. There he has stated:

In the end of September 1984 SI Balbir Singh met me once in the Prime Minister's house and told me that Beant Singh wanted to kill the Prime Minister before 15 August, he (Beant Singh) agreed to kill her with a granade and remote control but this task was to be put off because the same could not be arranged. Actual words being 'In do cheeson ka intezam nahim ho saka isliye baat tal gayi,

Similarly in his earlier statement Ex. PW44DA what this witness said was:

In the third week of October 1984 Beant Singh SI met me and told me that he had procured one constable. Actual words being 'October 1984 ke tisare hafte main Beant Singh mujhe mila usne bataya ke usne ek sipahi pataya hai' and that now both of them would put an end to Smt. Indira Gandhi's life very soon.

These portions of the statement which were put and proved from Amarjit Singh as his first statement recorded by the police clearly go to show that he had only alleged these things against Beant Singh. What he did later was to improve upon his statement and introduce Balbir Singh also or substitute Balbir Singh in place of Beant Singh. The only other inference is that he was himself a party to that conspiracy. Otherwise there is no explanation why he should keep on giving statement after statement, that too after 25 days of the incident. The second statement was recorded on 19 December and a third statement on 21 December 1984. It clearly shows that he was a convenient witness available to state whatever was desired from him. He appears to have become wiser day by day and remembered bit by bit, is certainly interesting to remember.

It could not be doubted that the two versions given out by this witness are not such which could easily be reconciled. In fact in his first version there is nothing against Balbir Singh. In his second statement he has tried to introduce things against him. This apparently is clear improvement. It is well-settled that even delay is said to be dangerous and if a person who is an important witness does not open his mouth for a long time his evidence is always looked with suspicion but here we have a witness who even after 25 days gave his first statement and said nothing against the present accused and then even waited for one more month and then he suddenly chose to come out with the allegations against this accused. In our opinion, therefore, such a witness could not be relied upon and even the High Court felt that it would not be safe to rely on the testimony of such a witness alone.

Apart from it, the evidence which he has given is rather interesting. According to him Beant Singh and Balbir Singh were so close to him that they used to keep him informed about their plans to assassinate the Prime Minister of India. But relation with Balbir was such that he was not even invited when Balbir Singh was married and therefore it was nothing but casual but still he claims that he had so much of close association that he used to be taken in confidence by these two persons. That means that he is one of the conspirators or otherwise he would not have kept quiet without informing his superiors as it was his duty to do when the Prime Minister was in danger.

In view of this, it is clear that there is no evidence at all to establish *prima facie* participation of this accused in conspiracy or any evidence to indicate that he had entered into any

agreement to do an unlawful act or to commit an offence alongwith the other accused persons. Therefore, in absence of any evidence in respect of the first part of s. 10 which is necessary it could not be contended that the confession of Satwant Singh could be of any avail or could be used against this appellant.

Before parting with this witness, one more thing may be noted. The High Court, in order to explain that this witness Amarjit Singh did not refer to Balbir Singh in his first statement on 24 November 1984 stated something out of imagination. The High Court has quoted his statement on 24 November 1984 in these words:

> He is also reported to have said that Beant Singh had wanted to kill Smt. Gandhi before 15 August and that he had agreed to do so if grenade and remote control were available.

In this context, the use of the word 'agreed' and word 'he' the High Court felt that they refer to Balbir Singh and none else. This appears to be an explanation given by Amarjit Singh in his statement in Court and the High Court felt that it could accept it. It is clear that where he says 'agreed' and 'he' in his statement on 24 November 1984 he had not named Balbir at all. It is only now in his statement at trial that he grew wiser and made an attempt by way of this explanation. It is rather unfortunate that the High Court felt that this explanation should be accepted. The statement against Balbir coming for the first time on 21 December 1984 itself in the light of the settled criminal jurisprudence of this country ought to have been rejected outright. Secondly, the High Court found corroboration from the confession of Satwant Singh. So far as the statement or the confession of Satwant Singh is concerned, it could not be used against this accused as we have earlier indicated.

Thirdly so far as the falcon incident is concerned, we do not know how the High Court felt that that incident corroborates the evidence of Amarjit Singh when Amarjit Singh alone talks of the falcon incident. There is no basis for this conclusion of the High Court.

Lastly, it may be noted that so far as this accused is concerned, even Bimla Khalsa, the wife of Beant Singh does not mention anything.

In the light of the discussions above, in our opinion, so far as this accused is concerned there is no evidence at all on the basis of which his conviction could be justified. He is therefore entitled to be acquitted.

Kehar Singh: The finding of guilt recorded by the High Court against Kehar Singh is a mixture of both relevant and irrelevant evidence adduced by the prosecution. We will consider only those that are most important and relevant. Material evidence against Kehar Singh is the evidence of PW65, Bimla Khalsa wife of Beant Singh. She was examined by the police on 16 January 1985 and 19 January 1985. This witness although has been declared hostile, but her statement could not be discarded *in toto* merely because on certain questions she has chosen not to support prosecution. It is true that her statement for the first time during investigation was recorded on 16 January 1985 but it could not be disputed that after all she is the wife of the main accused in this case. She has lost her husband on 31 October. She was placed in a situation where it would have been very difficult for her to compose herself in a manner in which she could give her statement immediately. It is nobody's case that she has any grudge against anybody.

Important circumstances which emerge from the testimony of this witness are:

(i) She was married to Beant Singh in 1976 through the good offices of her maternal uncle

Gurdeep Singh.

(ii) Kehar Singh's wife Jagir Kaur Phoophi and Phoopha and there was close friendship between the two families. Rajendra Singh son of Kehar Singh who was a friend of Beant Singh often used to have drinks with him. In her statement in Court later she also stated that the wives of Rajendra Singh and Shamsher Singh, brother of Beant Singh belonged to the same 'biradari'.

(iii) Kehar Singh started visiting their house more often after the 'Operation Bluestar'. Beant Singh and Kehar Singh had talked about the destruction of the Akal Takht in the Golden Temple complex on two or three occasions but became silent when she came.

(iv) In the last week of July, Beant Singh told her that he had gone to the Gurudwara at Moti Bagh at the instance of Kehar Singh and that they heard highly provocative and inciting speeches there. Beant Singh had told her that he would become a 'Shaheed' and that she should look after the children or God will look after them but he never told her that he wanted to kill Smt. Indira Gandhi.

(v) In the middle of September 1984 the birthday of the grandson of Ujagar Singh Sandhu was celebrated at his residence at Moti Bagh. Though they had not received any invitation, at Kehar Singh's instance they attended the party where many inciting speeches were delivered.

(vi) On 13 October 1984 her husband told her that he would be taking Amrit on 14 October 1984 and when she asked for the reason, he told her that it was in order go give up drinking.

(vii) On 17 October 1984 she was sent to Guru-dwara Sis Ganj along with Kehar Singh and Jagir Kaur to take Amrit there which she did.

(viii) On the evening of 17 October 1984 Kehar Singh came and was closetted together with Beant Singh on the roof of the house for 15 to 18 minutes. Satwant Singh who had come to their house on the two earlier occasions in the first week of October, also came. First two talked in low tone and later all the three had meals together. She asked Kehar Singh what they were talking about on the roof. He said it was about asking somebody to take Amrit. When she said why it needed to be kept secret from her, he became silent but he complained to her husband later about her having questioned him.

(ix) On 20 October 1984 Beant Singh's family went to Amritsar with Kehar Singh and his wife. Originally Beant Singh and Kehar Singh had intended to go alone. She has said that she would also like to go there and that all of them could go in March 1985. Then he insisted that she should also go with him, it was decided that Jagir Kaur should also go. At Amritsar they stayed with one M.R. Singh that evening while Bimla Khalsa and children and Jagir Kaur were listening to the Kirtan, Beant Singh and Kehar Singh went to see the Akal Takht. She also wanted to go but she was told she could see it next morning. Next morning also, Beant Singh and Kehar Singh left for Akal Takht early in the morning leaving them to follow later. When they were all there again Beant Singh and Kehar Singh went away somewhere and returned 3 to 4 hours later. On their way back again the two went away alone to some place for a few minutes. They purchased a cassette and a photo of Bhindrawale. Beant Singh stayed behind saying that to meet some one and join them at the railway station. They returned to Delhi on 21 October 1984.

(x) On 24 October 1984 Beant Singh insisted on her taking Amrit again at R.K. Puram

Gurudwara but she refused. After he returned from the night duty he went alongwith Satwant Singh on a scooter.

There is only one variation between the previous statement and evidence in Court. That relates to identification of Satwant Singh. In the Court she attempted to say that he was a boy and later explained that at that he had no beard but the manner in which the boy has been described and the occasions when the boy had come to their house, there is hardly any doubt left. Apart from it, so far as Satwant Singh is concerned even if we omit the evidence of Bimla Khalsa, it is not material. But it could not be doubted that from her evidence that the above circumstances have been established.

Next important circumstance is the '*Vak*'. It is alleged that when early morning the worship starts in a Gurudwara, the *Granth Sahib* is opened at random and some message from a page which is so opened is written on the blackboard as a '*Vak*' for the day. It is proved by Bimla Khalsa that Ex. P55A was written in the handwriting of Beant Singh. It was '*Vak*' of a particular day which was in the following terms:

> One gets comfort on serving the Guru. Then miseries do not come near. Birth and death come to an end and the black (wicked) do not have effect.

About this '*Vak*' having been taken out in the Gurudwara, there is some controversy as the witness produced for that purpose Surendra Singh, PW55 was not in a position to produce the diary but so far as Beant Singh is concerned, the '*Vak*' written by him on a piece of paper in yellow ink in Gurumukhi with date 13 October 1984 was put on it has been proved by the evidence of Bimla Khalsa. This was admittedly found from the quarters of Beant Singh on 31 October 1984 and it was lying inside the book 'Sant Bhindrawale'.

As far as the incident on 17 October is concerned, Bimla Khalsa in clear terms stated that Kehar Singh and Beant Singh had secret talks. She wanted to know it, but she was not given to understand. This kind of secret talk with Beant Singh which Kehar Singh had, is a very significant circumstance. Apparently Kehar Singh being an elderly person did not indicate to her about their plan. If the attempt of Kehar Singh was to dissuade Beant Singh then there was no occasion for him to keep the matter secret from his wife. On the contrary he should have indicated to his wife also what Beant Singh was planning. These talks therefore as proved by Bimla Khalsa go a long way in establishing Kehar Singh being a party to the conspiracy.

Her evidence also indicates that Beant Singh took *Amrit* on 14th and Beant Singh kept his golden 'kara' and ring in the house of Kehar Singh which have been recovered from the latter. It clearly goes to show that Kehar Singh knew why Beant Singh took *Amrit* and why he handed over the golden 'kara' and ring to him. It is also clear from the evidence of Bimla Khalsa that what transpired between Beant Singh and Kehar Singh on 14th was not conveyed to her and she was kept in dark.

In this background, the trip to Amritsar of Beant Singh, Kehar Singh and their families is of some significance. On 20 October 1984 Beant Singh and Kehar Singh alongwith their family members went to Amritsar. There is evidence indicated by Bimla Khalsa that originally Kehar Singh and Beant Singh wanted to go alone but ultimately they agreed that the families also could accompany. According to the evidence of Bimla Khalsa they reached at Amritsar at about 2 to 3 p.m. and went to Darbar Sahib Gurudwara in the evening of 20 October. While ladies and children were listening to *kirtan*, Beant Singh and Kehar Singh went to see the Akal Takht. Bimla Khalsa wanted to accompany them to see the Akal Takht but she was

told to see the same on the next morning. On the next morning i.e., on 21 October, PW53 was woken up by Kehar Singh and told that he would attend '*Asadi War Kirtan*' in Darbar Sahib. He went alongwith Beant Singh. The ladies and children went to Darbar Sahib at 8 a.m. alongwith PW53. They returned home at 11 a.m. Beant Singh and Kehar Singh did not return along with them. After lunch, PW53 took the ladies and children to the railway station. Beant Singh and Kehar Singh directly came to the railway station from where they caught the train to New Delhi. The attempt of these two persons to keep themselves away from the company of their wives and children speaks volume about their sinister designs. The way in which they remained mysterious if looked at with the secret talks which they had in the house of Bimla Khalsa earlier goes to establish that the two were doing something or discussing something or planning something which they wanted to keep as a secret even from Bimla Khalsa.

So far as '*Amrit Chhakna*' ceremony is concerned or taking *Amrit* is concerned, ordinarily it may not be significant. It is only a ceremony wherein a Sikh takes a vow to lead the life of purity and giving up all wordly pleasures and evil habits but this unfortunately is a situation which could be understood in different ways. The manner in which *Amrit* has been taken by Beant Singh and even Satwant Singh has been made to take it and even Bimla Khalsa made to take it makes it significant that in all these three of *Amrit* taking Kehar Singh was always with them to have it. It is also indicates that there was something in the mind of Beant Singh which was known to Kehar Singh and which he even tried to keep a secret from Bimla Khalsa, wife of Beant Singh and wanted Beant Singh to have a full religious purification and confidence.

There is yet another circumstance - Post-crime conduct of Kehar Singh. It is in the evidence that on the day i.e., 31 October 1984 although Kehar Singh claims to be on leave, he goes to the office at 10.45 a.m. and at that time when the news reached in the office about the assassination PW59 inquired from Kehar Singh as to what had happened? Kehar Singh replied in these words:

> Whosoever would take confrontation with the Panth, he would meet the same fate.

This remark shows his guilty mind with that of Beant Singh.

We have discussed some of the main features of the case and it is not necessary for us to go into other details which the High Court has discussed. These circumstances by themselves indicate that Kehar Singh was a co-conspirator to assassinate Mrs. Gandhi.

Satwant Singh: He was a constable on security duty at the residence of the Prime Minister.

He was charged under s. 302 read with s. 120B and s. 34 for murdering the Prime Minister Smt. Indira Gandhi, secondly under s. 307 for attempting to murder one Rameshwar Dayal, PW10 and under s. 27 of the Arms Act. To prove these charges, prosecution has examined Narain Singh, PW9, Rameshwar Dayal PW10 and Nathu Ram PW64 besides Sukhvir Singh PW3 and Raj Singh PW15. PW27 has deposed about the history as to how this person was recruited in the police in 1982 and how he happened to come to be posted at Teen Murti Lines and thereafter in the security duty with Prime Minister. PW14 duty officer at the Teen Murti Lines has deposed that DAP personnel was placed on duty at various duty points at the PM's house on weekly basis from Friday to Friday by Head Constable Dayal Singh the Company Havaldar. The daily duty maintained at Teen Murti Ex. PW4C shows that entry No. 85 that on the morning of 31 October 1984 Satwant Singh was put on duty at gate No. 4 in the Akbar Road House and not the TMC Gate and this entry is confirmed by Ex. PW15

daily diary clerk at that time. The arms and ammunition register Ex. PW3A at Teen Murti Lines also shows that Satwant Singh was issued an SAF carbine having Butt No. 80 alongwith five magazines and hundred live rounds of 99 of ammunition. He signed the register in taken of the receipt. PW3, the Armoury Incharge confirms this. There is also evidence to indicate that this person manipulated his duty and was put on the TMC gate where ultimately the incident took place on the morning of 31 October 1984.

The main evidence against him is evidence of eye-witnesses. The first eye-witness which I would like to refer is Narain Singh PW9. This witness stated that he was on duty at about 7.30 a.m. in the porch of the Prime Minister's house. According to him at 8.45 a.m. he with an umbrella took up his position near the entry gate as he came to know that Smt. Gandhi had to go to No. 1 Akbar Road to meet certain foreign TV representatives and he was to go along with her holding an umbrella to protect her from the sun. At 9.10 a.m. Smt. Gandhi came out of the house followed by Nathu Ram PW6 and her private secretary Shri R.K. Dhawan. Then he moved over to the right side and held the umbrella Ex. P19. They approached the TMC Gate and when they were about 10 ft. there from he saw that the gate was open and he also saw Beant Singh on the left side and Satwant Singh on the right side, the former in a Safari suit and the latter in the uniform and with a carbine stengun in his hands. At that time Beant Singh took out his revolver from the right dub and fired at Smt. Gandhi and immediately thereafter Satwant Singh also started firing at her. Smt. Gandhi was hit by these bullets and injured. She fell down on the right side. Seeing this he threw the umbrella on the left side, took out his revolver and jumped on Beant Singh. As a result of which revolver fell from the hands. He saw Satwant Singh throwing his carbine to the ground on his right side. At that time Shri Bhatt, the personal guard of Smt. Gandhi and ITBP personnel arrived there and secured Satwant Singh. Some other persons also came and secured Beant Singh. He then ran to summon the doctor and while going, he noticed that Rameshwar Dayal PW10 had also sustained bullet injuries. The doctor himself came running by then. He, Bhatt, the doctor and Nathu Ram took her to the escort car which had arrived near and placed her in the rear seat. By this time, Smt. Sonia Gandhi had also arrived and Smt. Gandhi was taken to AIIMS accompanied by Bhatt, Dhawan and Fotedar on the front seat and the doctor and Sonia Gandhi on the back seat. He went to the hospital in a staff car and PW10 was taken to AIIMS in another car. There she was taken to the eighth floor and he was given the duty of controlling the crowd. At about 10 or 10.15 a.m. R.P. Kochhar, PW73 arrived and this witness gave a statement in the doctors' room which was recorded by him and sent to Tuglak Road Police Station which is the FIR in this case.

His testimony is corroborated by the first information report and also by the two other eye-witnesses Rameshwar Dayal and Nathu Ram whose presence on the spot could not be doubted. Nathu was the personal staff of the Prime Minister and Rameshwar Dayal himself had received injuries. Apart from it, this evidence of direct witnesses also finds corroboration from the post-mortem report, recovery of catridges and arms on the spot and the evidence of the doctor and the expert who tallied the bullets. Under these circumstances even if the confession of this appellant Satwant Singh is not taken into consideration, still there is enough evidence which conclusively establishes his part in the offence and in this view of the matter there appears to be no reason to interfere with the conclusions arrived at by the two Courts below. In our opinion, therefore, the appeal of Satwant Singh deserves to be dismissed.

Then is the question of sentence which was argued to some extent. But it must be clearly understood that it is not a case where X is killed by Y on some personal ground or personal vendatta. The person killed is a lady and no less than the Prime Minister of this country

who was the elected leader of the people. In our country we have adopted and accepted a system wherein change of the leader is permissible by ballot and not by bullet. The act of the accused not only takes away the life of popular leader but also undermines our system which has been working so well for the last forty years. There is yet another serious consideration. Beant Singh and Satwant Singh are persons who were posted on the security duty of the Prime Minister. They are posted there to protect her from any intruder or from any attack from outside and therefore if they themselves resort to this kind of offence, there appears to be no reason or no mitigating circumstance for consideration on the question of sentence. Additionally, an unarmed lady was attacked by these two persons with a series of bullets and it has been found that a number of bullets entered her body. The manner in which mercilessly she was attacked by these two persons on whom the confidence was reposed to give her protection repels any consideration or reduction of sentence. In this view of the matter, even the conspirator who inspired the persons who actually acted does not deserve any leniency in the matter of sentence. In our opinion, the sentence awarded by the trial Court and maintained by the High Court appears to be just and proper.

In the light of the discussions above Criminal Appeal No. 180/87 filed by accused Kehar Singh and Criminal Appeal No. 182/87 filed by accused Satwant Singh are dismissed. Conviction and sentence passed against them are maintained whereas Criminal Appeal No. 181/87 filed by Balbir Singh is allowed. Conviction and sentence passed against him are set aside. He is in custody. He be set at liberty forthwith, if not wanted in connection with any other case.

K. Jagannatha Shetty J:

I agree respectfully with the conclusion reached by my learned brother, Mr. G.L. Oza J, in these appeals. I wish, however, in view of the importance of the questions involved, to give my own reasons, and to which I attach importance.

These appeals by special leave are directed against the conviction and sentence awarded against the appellants by the High Court of Delhi in Criminal Appeals Nos. 28 and 29 of 1986 and Murder Reference No. 2 of 1986.

The crime charged is not simply the murdering of a human being, but it is the crime of assassination of the duly elected Prime Minister of the country. The motive for the crime was not personal, but the consequences of the action taken by the Government in the exercise of constitutional powers and duties. In our democratic republic, if the Government becomes subversive of the purpose of its creation, the people will have the right and duty to change it by their irresistible power of ballot and have the Government of their own choice wisely administered. But no person who is duly constituted shall be eliminated by privy conspiracies. Indian citizens are committed to the constitution. They have faith in the ballot box. They have confidence in the democratic institutions. They have respect for constitutional authorities. The assassination of Mrs. Indira Gandhi, the third Prime Minister of India, has, therefore, come as a rude shock. It has sent shudder through the civilised world. The issues joined in these appeals involve the highest interest of the whole people of this country. It is a matter of great importance to the people of this country that the accused be lawfully tried and lawfully convicted or acquitted. A wrongful conviction or a wrongful acquittal may shake the confidence of the people in our justice delivery system. The matter, therefore, requires utmost concern.

Trial of the assassins and conspirators for the murder of Mrs. Indira Gandhi has resulted in the conviction. Satwant Singh (A1), Balbir (A2) and Kehar Singh (A3) are convicted of murder under s. 302 read with s. 120B, IPC. Satwant Singh is also convicted of murder under s. 302 read with ss. 120B and 34, IPC, as well as under s. 307 IPC and s. 27 of the Arms Act. The trial Judge has awarded the sentence of death on all the three accused. The trial Judge has also awarded other terms of imprisonment on Satwant Singh. The Delhi High Court has confirmed the conviction and sentence.

The prosecution version of the assassination may be briefly told.

That in June 1984 the Indian Army mounted an operation known as "Blue Star Operation" by which the Armed Force personnel entered the Golden Temple Complex at Amrits to flush out the armed terrorists. That operation resulted in loss of life and property as well as damage to the *Akal Takht* at the Golden Temple. It has offended the religious feelings of some members of the Sikh community. Resentment was expressed even by some of the Sikh employees of the Delhi police posted for Prime Minister's security. The accused person are Sikhs by faith. They had been expressing their resentment openly, holding the Prime Minister responsible for the action taken at Amritsar. They became parties to a criminal conspiracy to murder Mrs. Indira Gandhi.

Mrs. Indira Gandhi, the Prime Minister, had returned from an official tour of Orissa in the evening of 30 October 1984. The day followed was Wednesday. In the early hours of every Wednesday, Mrs. Indira Gandhi used to meet people in groups. So it was called "Darshan Day". Unfortunately, she did not adhere to that usual programme. The "Darshan" was cancelled because of another engagement. That engagement was with well-known actor and writer Peter Ustinov. His crew was to record an interview with Mrs. Indira Gandhi for Irish Television. They were waiting at Bungalow No. 1, Akbar Road, the home office of the Prime Minister. Bungalow No. 1, Safdarjung Road was the official residence of the Prime Minister. The two buildings are connected by a narrow cemented pathway. They are located practically in one campus, but separated by a sentry gate which is known as the "TMC Gate". This is the place where hidden hands sent shock waves to the Nation. Mrs. Indira Gandhi at about 9.10 a.m. emerged from her house with her loyal assistants and a faithful servant. Immediately behind her was head constable Narayan Singh (PW9) holding an umbrella to protect her against the sun. Rameshwar Dayal (PW10) an assistant sub-inspector, Nathu Ram (PW64), her personal attendant and R.K. Dhawan, special assistant were closely following Mrs. Gandhi. All were on the cemented pathway. Mrs. Gandhi was at the head of the entourage. She was approaching the TMC gate where Beant Singh, SI was on the left side while Satwant Singh, constable was on the right side. They had managed to station themselves together near the TMC gate. Beant Singh got to exchange his duty with SI Jai Narani (PW7). Satwant Singh ought to be at Beat No. 4. He, however, managed to get TMC sentry booth by misrepresenting that he was suffering from dysentery. He was given that place since it was near the latrine. Beant Singh opened fire from his revolver. Beant Singh fired five rounds and Satwant Singh released 25 bullets at Mrs. Gandhi. Then and there Mrs. Gandhi fell down never to get up. She was immediately rushed to the All India Institute of Medical Sciences (AIIMS). There a team of doctors fought their losing battle to save the life of the slain Prime Minister.

Rameshwar Dayal (PW10) who was following Mrs. Gandhi also received bullet injuries as a result of the shots fired by the accused.

At the spot of the incident, the two assassins are alleged to have thrown their arms and said "I have done what I had to do. Now you do what you have to do". The personnel of

the Indo Tibetan Border Police (ITBP) pounced on them and took them off to the guard room. What happened inside the guard room is not on the record. The fact, however, remains that both the assassins had been shot by the ITBP personnel. They were soon removed to the hospital where Beant Singh was pronounced dead and Satwant Singh was found to be critically injured. Satwant Singh survived after 15 days treatment. He is accused No. 1 in this case. Balbir Singh and Kehar Singh are the other two accused. They are said to be parties to the conspiracy to eliminate Mrs. Indira Gandhi. Balbir Singh was an SI posted in the security at the residence of the Prime Minister. Kehar Singh was an assistant in the directorate general of supply and disposal, New Delhi. He is related to SI Beant Singh.

After the investigation, the charge-sheet was filed against the three appellants. They were accused of offences under ss. 120B, 109 and 34 read with s. 302 of the IPC and also of substantive offences under ss. 302 and 307 of the IPC and ss. 27, 54 and 59 of the Arms Act. It may be mentioned that the report also names Beant Singh as one of the accused but since he had died, the charges against him were said to have abated.

In due course, the accused were committed to take their trial in the Court of Sessions. In the meanwhile, the High Court of Delhi issued two notifications. By one notification, the High Court directed the trial of the case shall be held in the Central Jail, Tihar, according to law. By another notification, the High Court directed that "the case be tried by Shri Mahesh Chandra, Additional Sessions Judge, New Delhi." In pursuance of the above notifications, the accused were tried in Central Jail, Tihar. The learned trial Judge found the accused guilty of all the charges framed against them and sentenced them as earlier stated.

There were two appeals before the High Court of Delhi challenging the conviction and sentence. Satwant Singh preferred Criminal Appeal No. 28 of 1986. Balbir Singh and Kehar Singh together preferred Criminal Appeal No. 29 of 1986. These appeals were listed along with the Murder Reference No. 2 of 1986, before a Bench consisting of three Judges. The learned Judges, in the course of hearing, also paid a visit to the scene of the crime to get acquainted with the topography of the place of incident. After considering the material on record, the High Court accepted Murder Reference 2/86 and confirmed the conviction and the sentence of death on all the accused. The High Court also confirmed the other sentences on Satwant Singh. Consequently, the appeals preferred by the accused were dismissed.

In these appeals, the accused are challenging the validity of their trial and the legality of their conviction and sentence. The contentions raised as to legality of the trial admit of being summarised and formulated thus:

(i) Whether the High Court has power to direct the trial of the case at a place other than the normal seat of the Court of Sessions? (ii) Whether the trial inside the jail premises is the very antitheses of an open trial? (iii) Whether the trial proceedings were devoid of sufficient safeguards to constitute a public trial? And (iv) Whether the Court's refusal to call for the statements made by certain prosecution witnesses before the Thakkar Commission was justified?

I will deal with these questions in turn.

Mr. R.S. Sodhi (*amicus curiae*) appeared for accused No.1 and Mr. Ram Jethmalani, Senior Advocate, (*amicus curiae*) appeared for accused Nos. 2 and 3. Mr. G. Ramaswamy, Additional Solicitor General appeared for the state. Both sides of the case have been placed before us with care and skill.

Re: Question (i): Patial House is the place where the Court of Sessions at Delhi shall ordinarily hold its sittings. On 10 May 1985, the Delhi High Court, however, issued a notification in exercise of the powers conferred by s. 9(6) of the Code of Criminal Procedure, 1973 ("Code") directing that the sessions case relating *State v. Satwant Singh & Ors.* (FIR No. 241 of 1984) shall be held in the Central Jail, Tihar. The notification reads:

> In exercise of the power conferred by s. 9(6) of the Code of Criminal Procedure 1973 the Hon'ble the Chief Justice and Judges of this Court have been pleased to order that the trial of the sessions case relating to FIR No. 241/84 of the Arms Act *State v. Satwant Singh & Ors.* shall be held in the Central Jail, Tihar, according to law.
>
> By Order Of The Court Sd/- (Usha Mehra) Registrar

On the same days the High Court passed another order under s. 194 of the Code designating Shri Mahesh Chandra, Additional Sessions Judge as the Judge to try the said case. Shri Mahesh Chandra was a Senior District and Sessions Judge at the Courts in New Delhi within the jurisdiction of which the offence was committed. The case of the appellants is that the High Court has no jurisdiction to issue the first notification directing the trial at Tihar Jail. It is argued that s. 9(6) confers power on the High Court to specify by notification a place or places at which criminal trials can be held by the Court of Sessions in the Union Territory of Delhi. The requirement of a notification of the High Court of the place or places where the Court of Session will function is intended to facilitate the process of public participation. Such a notification, it is submitted has already been issued by the High Court of Delhi. The whole of the Union Territory, it is pointed out, comprises of one division or district. Originally, the trials in cases pertaining to the entire territory were conducted only at the District Court Complex in Tis Hazari. With the increase of sessions cases, the Court of Sessions was also authorised to hold its sittings at the Parliament Street Courts (now shifted to Patiala House) in New Delhi and the District Court Complex at Shandra. It is pointed out that Shri Mahesh Chandra himself was holding Court at Patiala House in relation to certain other cases, and therefore, he can ordinarily hold his sittings only at Patiala House even for the present case. It is also submitted that s. 9(6) empowers the High Court only to specify the place or places at which all, or any class of the cases pertaining to a division can be heard and does not empower the High Court to specify the place or places of hearing for individual cases. The choice of any other place for holding the sittings, wholly or partly, in any particular case lies within the power of the trial Judge. The trial Judge may exercise that power for the general convenience of parties and witnesses when agreed to by both the parties.

The High Court did not accept these submissions. In substance, it was held that the actual location of a Court can be decided by the High Court either generally or with reference to a particular Court or even with reference to a particular case if there is compelling reason. The High Court also said that the fact that it is done with reference to a particular case impairs nobody's fundamental right and is also not discriminatory, as no offender has a vested right to be tried at the usual seat of the Court of Sessions.

The High Court, in my judgment, is right in reaching the above conclusion.

s. 9(6) provides:

> s. 9. Court of Sessions: (6)
>
> The Court of Sessions shall ordinarily hold its sitting at such place or places as the High Court may, by notification specify but if, in any particular case, the Court of Sessions is of opinion that it will tend to the general convenience of the parties and witnesses to hold its

sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Sub-section (6) can be conveniently divided into two parts. The first part provides power to the High Court to notify the place or places for the Court of Sessions to hold its sittings for disposal of cases. The second part deals with the power of the Court of Sessions in any particular case to hold its sittings at a place not notified by the High Court.

The real question which we have to determine is, what do the words 'place or places' mean in the context in which we find it in the first part of sub-section 60, and in the legal landscape of other allied provisions in the code?

There is a great deal of juristic writing on the subject of statutory interpretation, and I make no attempt here to summarise it all. I will do it elsewhere in this judgment when dealing with question No. (iv). Here I do not want to spend more of my time since I need not search for the meaning of the word 'place'. It is an inclusive definition. The word 'place' as defined includes a house, building, tent, vehicle, and vessel.

"The words, too are empirical sighs, not copies or models of anything ... The words are slippery customer ..." says Colin Cherry (On Human Communication at 10). The interpretation of a word must, therefore, depend upon the text and the context. As O. Chinnappa Reddy J, said: "If the text is the texture the context is what gives the colour. Neither can be ignored. Both are textual. A statute is best interpreted when we know why it was enacted." (*Reserve Bank of India v. Peerless G.F. & I. Co.* [1987] AIR SC 1023.)

The words "place or places" used in s. 9(6) apparently indicates that there could be more than one place for the sitting of the Court of Sessions. The different places may be notified by different notifications. There may be a general notification as well as a special notification. The general notification may specify the place for the class of cases where Court of Sessions shall sit for disposal. The special notification may specify the same place or a different place in respect of a particular case.

Adroitly, it is said that the words and sections like men do not have their full significance when standing alone. Like men, they are better understood by the company they keep. Section 9(4) and s. 194 of the code are the closely related sections. They may also be examined in order to understand the true meaning of the word "place or places" in the first part of s. 9(4).

Section 9(4) reads:

The sessions Judge of the session division, may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

Section 9(4) empowers the High Court to appoint a Sessions Judge of one division to sit at such place or places in another division for disposal of cases. The High Court while so appointing need not direct him to sit only at the ordinary place of sittings of the Court of sessions. There is no such constraint in s. 9(4). The High Court may also issue a separate notification under s. 9(6) specifying the place or places where that Sessions Judge should sit for disposal of cases.

Section 194 provides:

> Additional and Assistant Sessions Judges to try cases made over to them - An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or **as the High Court may, by special order, direct him to try.**
> (Emphasis supplied).

Section 194 provides power to the High Court to make a special order directing an Additional or Assistant Sessions Judge of the same division to try certain specified cases or a particular case. If the High Court thinks that the Additional or Assistant Sessions Judge should hold the Court at a specified place, a separate notification could be issued under s. 9(6).

The argument that the first part of s. 9(6) should be read along with the second part thereof has, in the context, no place. The first part provides power to the High Court. It is an administrative power, intended to further the administration of justice. The second part deals with the power of the Court of Sessions. It is a judicial power of the Court intended to avoid hardship to the parties and witnesses in a particular case. One is independent of and unconnected with the other. So, one should not be confused with the other. The judicial power of the Court of Sessions is of limited operation, the exercise of which is conditioned by mutual consent of the parties in the first place. Secondly, the exercise of the power has to be narrowly tailored to the convenience of all concerned. It cannot be made use of for any other purpose. This limited judicial power of the Court of Sessions should not be put across to curtail the vast administrative power of the High Court.

Section 9(6) is similar to s. 9(2) of the old code (Act 4 of 1898). The only difference being that s. 9(2) conferred power on the state Government to specify the place or places where the Court of Sessions should sit for the purpose of disposal of cases. That power is now vested in the High Court. The change of authorities was made to keep in tune with the separation of judiciary from the executive. The scope of the sections, however, remains the same. In *Lakshman v. Emperor* [1931] AIR Bom 313, a special bench of the Bombay High Court sustained the validity of a similar notification issued under s. 9(2). Satkar J, expressed his view (at 320):

> Under s. 9, sub-section (2), Criminal PC the local government may, by general or special order, in the official gazette, direct at what place or places the Court of Sessions shall hold its sittings, but until such order is made the Court of Sessions shall hold its sittings as heretofore.
>
> It is contended on behalf of the accused that the local government has already issued a notification directing the Court of Sessions to be held at Alibag in certain months commencing on dates to be fixed by the Sessions Judge of Thana, and that the notification dated 5 February 1931 does not direct any new place where the Court of Sessions should hold its sitting, and further that the notification does not order the Court of Sessions to hold its sitting at Alibag, but has directed a particular Additional Sessions Judge to hold the sitting of his Court at Alibag. Under s. 193(2), to prevent a special order being passed directing at what place a Court of Sessions should hold its sitting. If by reason of an outbreak of plague or any other cause it becomes necessary or expedient that a Court of Sessions hold its sittings in respect of all the cases at a different place or should try a particular case at a particular place, the words of s. 9(2) is an administrative order, passed by the local government in the present case directing the Additional Sessions Judge to try this particular case at Alibag does not appear to contravene the provisions of s. 9(2).

This appears to be the correct view to be taken having regard to the scheme and object of s. 9(2) of the old code.

In *Ranjit Singh v. Chief Justice & Ors.* [1985] (Vol. 28) DLT 153 and others, the Delhi High Court while considering the validity of a like notification proclaimed more boldly (at 157):

> s. 9(6) recognises that the Court of Sessions if it wishes to hold its sitting at another place can only do so with the consent of prosecution and the accused. As to the specifying of places of sitting of Court of Sessions no such restriction is there and it is left to the best judgment of the High Court. Of course, this does not mean that such a power can be exercised arbitrarily. But then it must be noted that Courts have consistently held that where power is vested in a high official it must ordinarily be presumed that the power is exercised in a *bona fide* and reasonable manner. Surely, it is a reasonable presumption to hold that when the full Court exercised its power, like in the present case, directing that the Court of Sessions may hold its sitting at a place other than its ordinary place of sitting considerations of the interest of justice, expeditious hearing of the trial and the requirement of a fair and open trial are considerations which have weighed with the High Court in issuing the impugned notification. It should be borne in mind that very rarely does the High Court exercise its power to direct any particular case to be tried in jail. When it does so it is done only because of overwhelming consideration of public order, internal security and realisation that holding of trial outside jail may be held in such a surcharged atmosphere as to completely spoil and vitiate the Court atmosphere where it will not be possible to have a calm, detached and fair trial. It is these considerations which necessitates the High Court to issue the impugned notification. Decision is taken on these policy considerations and the question of giving a hearing to the accused before issuing the notification is totally out of place in such matters. These are matters which evidently have to be left to the good sense and to the impartiality of the Full Court in taking a decision in a particular case.

It seems to me that the High Court of Delhi is also right in observing that it is unnecessary to hear the accused or anybody else before exercising the power under s. 9(6). Such a hearing, however, is required to be given by the Court of Sessions if it wants to change the normal place of sitting, in any particular case, for the general convenience of parties and witnesses.

From the foregoing discussion and the decisions, it will be clear that the impugned notification of the High Court of Delhi directing that the trial of the case shall be held at Tihar Jail is not *ultra vires* of s. 9(6) of the code.

Re: Question (ii):

It is argued that public trial is a fundamental requirement of the constitution and is a part of the constitutional guarantee under art. 21. A public trial in jail in the very nature of things is neither desirable nor possible. The massive walls, high gates, armed sentries at every entrance and the register maintained for noting the names of the visitors are said to be the inhibiting factors to keep away the potential visitors. People generally will not venture to go to jail and it is said, that jail is notionally and psychologically a forbidden place and can never be regarded as a proper place for public trial.

The High Court rejected these contentions. The High Court, however, proceeded on the assumption that "a public trial is a part of the constitutional guarantee under art. 21 of our constitution. It is unnecessary to deal with that aspect in this case. In *A.K. Roy v. Union of India* [1982] 2 SCR 272, Chandrachud C.L., speaking for the constitution Bench said:

> The right to public trial is not one of the guaranteed right under our constitution as it is under the sixth amendment of the American Constitution which secures to person charged with crimes a public, as well as speedy trial. Even under the American Constitution, the right

guaranteed by the sixth amendment is held to be personal to the accused which the public in general cannot share.

The right of an accused to have a public trial in our country has been expressly provided in the code, and I will have an occasion to consider that question a little later. The sixth amendment to the United States Constitution provides. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury ..." No such right has been guaranteed to the accused under our Constitution.

The argument that jail can never be regarded as proper place for a public trial appears to be too general. The jail trial is not an innovation. It has been there before we were born. The validity of jail trial with reference to s. 352 of the Code of 1898 since re-enacted as s. 327(1) has been the subject matter of several decisions of different High Courts. The High Court in this case has examined almost all those decisions. I will refer to some of them with laconic details. Before that, it is better to have before us s. 352 of the code of 1898. It reads:

> 352. Courts to be open - The place which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them.
>
> Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial or, any particular case, that the public generally, or any particular person, shall not have access or be or remain in, the room or building used by the Court.

In *Sahai Singh v. Emperor* [1917] AIR Lahore 311, the accused were convicted and sentenced in the trial held in a jail. Their conviction was challenged before the High Court at Lahore on the ground, amongst, others, that the trial was vitiated because it was held in the jail. The High Court rejected the contention stating:

> It is necessary that I should first mention a contention that the whole trial is vitiated because it was held in the jail. Counsel for some of the appellants has referred to s. 352, Criminal Procedure Code, but there is nothing to show that admittance was refused to any one who desired it, or that the prisoners were unable to communicate with their friends or Counsel. No doubt it is difficult to get reason, if for no other, such trials are usually undesirable, but in this case the executive authorities were of the opinion that it would be unsafe to hold the trial elsewhere.

In *Kailash Nath v. Emperor* [1947] AIR All 436, the Allahabad High Court said that there is no inherent illegality in jail trials if the Magistrate follows the rules of s. 352 and the place becomes something like an open Court.

The practice of having trials inside jails, as the High Court has rightly pointed out, seems to have persisted even after the coming into force of the Constitution. *In re: M.R. Venkataraman* [1950] AIR Madras 441, the High Court of Madras after referring to the decisions in *Kailash Nath's* case and *Sahai's* case, observed:

> Again, if the conveyance of prisoners, and the accused to and from the Court house or other buildings, will be attended with serious danger of attack, and the rescue of the accused or the prisoners, or with heavy cost to the Government in providing an armed escort, it may well be within the powers of the Judge or Magistrate, after due consideration of the public interest and after writing down the reasons in each case, to hold the trials even inside the jail premises, where the accused are confined.

In re: T.R. Ganeshan [1950] AIR Madras 696, the Madras High Court was again called upon to consider the validity of a jail trial. In this case, the trial was held in recreation room which was within the jail compound. The building consisted of a hall and verandah on two sides.

It was situated at some distance from the prison walls proper. It was accessible to the public. The press reporters, some members of the Bar and public also attended the trial proceedings. The High Court also said that in the interest of justice and fair trial of the case itself that, in certain circumstances and in some cases, the public may be excluded.

The Calcutta High Court in *Prasanta Kumar v. The State* [1952] AIR Calcutta 91 and Madhya Pradesh High Court in *Narwar Singh & Ors. v. State* [1952] AIR MP 193 recognised the right of the Magistrate to hold Court in jail for reasons of security for accused, for witnesses or for the Magistrate himself or for other valid reasons.

It may now be stated without contradiction that jail is not a prohibited place for trial of criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reasons of security to the parties, witnesses and for other valid reasons. The enquiry or trial, however, must be conducted in open Court. There should not be any veil of secrecy in the proceedings. There should not even be an impression that it is a secret trial. The dynamics of judicial process should not be thrown open to the public at every stage. The public must have reasonable access to the place of trial. The Presiding Judge must have full control of the Court house. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice.

In the present case there is no reason to find fault with the decision of the High Court to have the trial in Tihar Jail. The records show that the situation then was imperative. The circumstances which weighed with the High Court may be gathered from a letter dated 8 May 1985, addressed by the Home Secretary to the Registrar of the High Court. The relevant portion of the letter reads:

> The case is of very special nature and of utmost importance. The assassination of the late Prime Minister had provoked violence and security of state besides the maintenance of law and order had become vital problems for administration. There is every risk of breach of public peace and disturbance of law and order, if the trial is held in an open place. The lives of the trial Judge, prosecutor and those otherwise involved in the prosecution of the case may be jeopardised. It is on record that during committal proceeding the Magistrate and prosecutor concerned were threatened with dire consequences as they were working for a successful prosecution. The circumstances in which the Hon'ble High Court was pleased to accept the prayer of the administration for conducting remand and committal proceedings in Central Jail, Tihar continue to exist. It is only for the security of the Judge, witnesses, police officers and others but also for the safety of the accused themselves that the trial of the case may be held in Central Jail, Tihar.

The letter reveals a grim picture of the then existing situation. It is said that the assassination of Smt. Indira Gandhi had provoked widespread violence threatening the security of the state and the maintenance of law and order. The remand and the committal proceedings had to be taken in Tihar Jail since the Magistrate and prosecutor were threatened with dire consequences. It is also said that such circumstances continued to exist when the case came up for trial. The letter ends with a request to have the trial of the case in Tihar Jail for the security of the Judge, witnesses, police officers and also for the safety of the accused themselves. The High Court also has taken note of the events that immediately followed the assassination of Smt. Gandhi. Beant Singh one of the assassins was shot dead and Satwant Singh who is the accused herein received near fatal gun shot injury.

That is not all. There was unprecedented violence aftermath in the national capital and other places. Frenzied mob armed with whatever they could lay their hands were seen beseiging passing Sikhs and burning their vehicles, as doctors in the hospital fought their vain battle

to save the life of Mrs. Indira Gandhi. Even President Zail Singh's cavalcade, making its way from the airport to the hospital was not spared. The reaction of outrage went on unabated followed by reprisal killings and destruction of properties. The local police force was badly shaken. They could do little even to contain the violence. The Army had to be deployed to stem the tide of deluge. The new Prime Minister, Mr.Rajiv Gandhi made an unscheduled broadcast to the nation pleading for sanity and protection to the Sikhs. Nevertheless three days passed on with murder and loot leaving behind a horrendous toll of more than two thousand dead and countless property destroyed. It is a tragedy frightening even to think of. This has been referred to in the report (at 11 to 15) of Justice Ranganatha Misra Commision of Inquiry. These unprecedented events and circumstances, in my judgment, would amply justify the decision of the High Court to direct that the trial of the case should take place in Tihar Jail.

Re: Question (iii)

The question herein for consideration is whether the trial held in Tihar Jail was devoid of sufficient safeguards to constitute an open trial?

As a preliminary to the consideration of this question, it is necessary to understand the scope of s. 327(1) of the code. The section provides:

> Section 327. Court to be open:
>
> (1) The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:
> Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access, to or be or remain in, the room or building used by the Court.

The main part of sub-section (1) embodies the principle of public trial. It declares that the place of inquiry and trial of any offence shall be deemed to be an open Court. It significantly uses the words "open Court." It means that all justice shall be done openly and the Courts shall be open to public. It means that the accused is entitled to a public trial and the public may claim access to the trial. The sub-section however, goes on to state that "the public generally may have access so far as the place can conveniently contain them". What has been stated here is nothing new. It is implicit in the concept of a public trial. The public trial does not mean that every person shall be allowed to attend the Court. Nor the Court room shall large enough to accommodate all persons. The Court may restrict the public access for valid reasons depending upon the particular case and situation. As Judge Cooley states (*Cooley's Constitutional Law*, Vol. I, 8th Edn., at 647):

> It is also requisite that the trial be public. By this is not meant that every person who seeks fit shall in all cases be permitted to attend criminal trials; because there are many cases where, from the character of the charge and the nature of the evidence by which it is to be supported, the motives to attend the trial on the part of portions of the community would be of the worst character, and where regard for public morals and public decency would require that at least the young be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light. The requirement of a trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility into the importance of their functions and the requirement is fairly observed if, without partiality or favoritism, a reasonable proportion of the public is

> suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn thither by a prurient curiosity, are excluded altogether.

The proviso to sub-section (1) of s. 327 specifically provides power to the Presiding Judge to impose necessary constraint on the public access depending upon the nature of the case. It also confers power on the Presiding Judge to remove any person from the Court house. The public trial is not a disorderly trial. It is an orderly trial. The Presiding Officer may, therefore, remove any person from the Court premises if his conduct is undesirable. If exigencies of a situation require, the person desiring to attend the trial may be asked to obtain a pass from the authorised person. Such visitors may be even asked to disclose their names and sign registers. There may be also security checks. These and other like restrictions will not impair the right of the accused or that of the public. They are essential to ensure fairness of the proceedings and safety to all concerned.

So much as regards the scope of public trial envisaged under s. 327(1) of the code. There are yet other fundamental principles justifying the public access to criminal trials. The crime is a wrong done more to the society than to the individual. It involves a serious invasion of rights and liberties of some other person or persons. The people are, therefore, entitled to know whether the justice delivery system is adequate or inadequate. Whether it responds appropriately to the situation or it presents a pathetic picture. This is one aspect. The other aspect is still more fundamental. When the state representing the society seeks to prosecute a person, the state must do it openly.

As Lord Shaw said with most outspoken words *Scott v. Scott* [1913] AIR AC 417:

> It is needless to quote authority on this topic from legal, philosophical, or historical writers. It moves Bentham over and over again. 'In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice.' 'Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbability. It keeps the Judge himself while trying under trial. 'The security of securities is publicity.' But amongst historians the grave and enlightened verdict of Hallam, in which he ranks the publicity of judicial proceedings even higher than the rights of the Parliament as a guarantee of public security, is not likely to be forgotten: 'Civil liberty in this kingdom has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any state be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise...

In open dispensation of justice, the people may see that the state is not misusing the state machinery like the police, the prosecutors and other public servants. The people may see that the accused is fairly dealt with not unjustly condemned. There is yet another aspect. The Courts like other institutions also belong to people. They are as much human institutions as any other. The other instruments and institutions of the state may survive by the power of the purse or might of the sword. But not the Courts. The Courts have no such means or power. The Courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing Courts more and more to public gaze.

There are numerous benefits accruing from the public access to criminal trials. Beth Hornbuckle Fleming in his article "First Amendment Right of Access to Pretrial Proceedings in Criminal Cases" (*Emory Law Journal*, Vol. 32 [1983] p. 618 to 688) neatly recounts the

benefits identified by the Supreme Court of the United States in some of the leading decisions. He categorizes the benefits as the "fairness" and "testimonial improvement" effects on the trial itself, and the "educative" and "sunshine" effects beyond the trial. He then proceeds to state:

> Public access to a criminal trial helps to ensure the fairness of the proceeding. The presence of public and press encourages all participants to perform their duties conscientiously and discourages misconduct and abuse of power by Judges, prosecutors and other participants. Decisions based on partiality and bias are discouraged, thus protecting the integrity of the trial process. Public access helps to ensure that procedural rights are respected and that justice is applied equally.
>
> Closely related to the fairness function is the role of public access in assuring accurate fact finding through the improvement of witness testimony. This occurs in three ways. First, witnesses are discouraged from committing perjury by the presence of members of the public who may be aware of the truth. Second, witnesses like other participants, may be encouraged to perform more conscientiously by the presence of the public, thus improving the overall quality of testimony. Third, unknown witnesses may be inducted to come forward and testify if they learn of the proceedings through publicity. Public access to trials also plays a significant role in educating the public about the criminal justice process. Public awareness of the functioning of judicial proceedings is essential to informed citizen debate and decision making about issues with significant effects beyond the outcome of the particular proceedings. Public debate about controversial topics, such as, exclusionary evidentiary rules, is enhanced by public observation of the effect of such rules on actual trials. Attendance at criminal trials, is a key means by which the public can learn about the activities of police, prosecutors, attorneys and other public servants, and thus make educated decisions about how to remedy abuses within the criminal justice system.
>
> Finally, public access to trials serves an important "sunshine" function. Closed proceedings, especially when they are the only judicial proceedings in a particular case or when they determine the outcome of subsequent proceedings, may foster distrust of the judicial system. Open proceedings enhance the appearance of justice and thus help to maintain public confidence in the judicial system.

With these observations, let us now hark back to the safeguards provided to ensure an open trial in this case. First, let us have an idea of the building in which the trial took place. The office block of the jail staff was used as the Court House. It is an independent building located at some distance from the main jail complex. In between there is a court-yard. This court-yard has direct access from outside. A visitor after entering the court-yard can straight go to the Court House. He need not get into the jail complex. This is evident from the sketch of the premises produced before us. It appears the person who visits the Court House does not get any idea of the jail complex in which there are jail wards and cells. From the sketch, it will be also seen that the building comprises of a Court hall, bar room and chamber for the Judge. The Court hall can be said to be of ordinary size. It has seating capacity for about fifty with some more space for those who could afford to stand. The accused as under trial prisoners were lodged at jail No. 1 inside the jail complex. It was at a distance of about 1 km from the Court House. For trial purposes, the accused were transported by van. In the Court hall, they were provided with bullet proof enclosure.

This is a rough picture of the Court House where the accused had their trial. For security reasons, the public access to trial was regulated. Those who desired to witness the trial were required to intimate the Court in advance. The trial Judge used to accord permission to such persons subject to usual security checks. Before commencement of the trial of the case, the representatives of the Press and News Agencies, national and international, approached

the trial Judge for permission to cover the Court proceedings. The representatives of BBC, London Times, New York Times and Associated press were some of them. The trial Judge allowed their request by his order dated 15 May 1985 in the following terms:

> I do feel that in the best traditions of the trial, the press is permitted to cover the proceedings of the trial in the case. In view thereof I think it just and proper to allow the press to cover the proceedings. Without exception the news agencies would have a right to cover the proceedings through representative. So far as individual papers are concerned, efforts would be made to accommodate as many to them as security and space would permit. In view thereof, it is directed that a letter be addressed to the Supdt. Jail, Tihar with the request that the press representatives may be allowed to enter and have access to the Court room where the proceedings would be held in the jail. It would be open to the Supdt. Jail to put such restrictions as regards security check-up or production of accredition cards or identity cards as he considers necessary.

On 20 May 1985, Kehar Singh (A3) filed an application before the trial Court contending that the trial should be held in open Court at Patiala House, New Delhi and not in Central Jail, Tihar. The state filed an objection contending *inter alia*:

> That regulated entry has been made for the safety of the others concerned with trial. Every specific request of the accused and others to attend the trial has been allowed by the Court. The entry of the Court room is merely regulated in the interest of safety. A blanket charter to permit every person known or unknown or whose antecedents are not proper can very much defeat the ends of justice. Not only it has to be ensured that a fair trial is given, but it has also to be kept in view that the prevailing peculiar situation, the security is not jeopardized at any cost. The members and the relatives of the accused have been permitted by the Court to be present at the time of hearing. It was, therefore, not a closed or secret trial.
>
> In view of the prevailing situation and peculiar circumstances, the Hon'ble High Court has *vide* its order chosen the venue of the trial. The only proper venue for a trial like this is jail. Even this learned Court would have opted for the same in view of the security risk nature of the crime, persons involved and keeping in view the other allied circumstances of the case. It was also stated, "that the case as is a product of misguided fundamentalism and terrorism. In the prevailing atmosphere in the country, the accused as well as the witnesses are in grave danger of outside terrorists' attacks and this has to be safeguarded. Transport of accused persons at set times from and to the jail is fraught with danger.

The application of the accused and the objections thereof were considered and disposed of by order dated 5 June 1985. The relevant portion of the order reads:

> ...There can be no dispute that public has a right to know but it is precisely for this purpose that National and International Press have been allowed to be present in the Court during the entire trial. The press is the most powerful watch-dog of the public interest and, certainly, we in India have not only free but also a very responsible press and interests of general public are quite safe in their hands. It is not merely Indian press representatives and the news agencies which have been allowed to come to attend the trial but the International agency like BBC, London Times, New York Times and Associated Press have also been allowed and admitted and are, in fact, present.
>
> It can be categorically declared and placed on record by this Court that all press representatives and news agencies whosoever have sought permission have been without exception granted necessary permission by this Court. I am sure right of public to know about the trial has been more than assured by the presence of the Press in the Court. The suggestion of learned defence Counsel that presence of Press is not sufficient guarantee is not a fair comment on a free, fair and responsible Press of India. It would be proper to mention here

a that to ensure fair trial and judicious administration of justice the presence of defence Counsel, the Press and the relations of the accused persons has been allowed...

With reference to the people in general, it was pertinently observed:

> Nonetheless, space permitting, this Court would not be averse or disinclined to allow public men also to attend the proceedings subject to usual security check-up.

b The learned trial Judge did not make the aforesaid observation as an empty formality. True to his words, he did permit access to the members of the public also. He permitted even the Law students in batches to witness the trial. This we could see from the extract of the visitors' book maintained by the authorities. There is hardly any instance brought to our attention where a person who sought permission was denied access to the Court. The High Court has also considered this aspect carefully. The High Court has observed that the "trial Judge has c given access to the place of trial for all members of the public who may be minded to attend the same save for certain reasonable restriction imposed in public interest." This statement has not been shown to be incorrect. The fact also remains that the accused were represented by leading members of the Bar. Some of the close relatives of the accused were allowed to be present at the trial. All press representatives and news agencies whoever sought permission have been allowed to cover the day to day Court proceedings. The trial Judge in his order d dated 5 June 1985 has specifically stated this. There can, therefore, be no doubt or dispute as to the adequacy of safeguards provided to constitute an open trial. Indeed, the steps taken by learned Judge are more than adequate to ensure fair trial as well as public trial.

For the accused, it is argued that the people can assert their right of access to criminal trials in the exercise of their fundamental right guaranteed under art. 19(1)(a) of the constitution e and they need not be under the mercy of the Court. It is also argued that there shall not be any discrimination in the matter of public access to judicial proceedings and first come first served should be the principle no matter whether one is a press person or an ordinary citizen. The contentions though attractive need not be considered since no member of the public or press is before us making grievance that his constitutional right of access to the trial has been denied in this case. This Court has frequently emphasized that the decision of the Court f should be confined to the narrow points directly raised before it. There should not be any exposition of the law at large and outside the range of facts of the case. There should not be even *obiter* observations in regard to questions not directly involved in the case. These principles are more relevant particularly when we are dealing with constitutional questions. I should not transgress these limits. However, the decisions referred to us may be briefly touched upon here.

g In *Naresh Shridhar Mirajkar v. State of Maharashtra* [1963] 3 SCR 744, this Court had an occasion to consider the validity of a judicial verdict of the High Court of Bombay made under the inherent powers. There the learned Judge made an oral order directing the Press not to publish the evidence of a witness given in the course of proceedings. That order was challenged by a journalist and others before this Court on the ground that their fundamental rights guaranteed under art. 19(1)(a) and (g) have been violated. Repelling the contention, h Gajendragadkar CJ, speaking for the majority view, said (at 760-61):

> The argument that the impugned order affects the fundamental right of the petitioners under art. 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can effect the fundamental right of the citizens under Art.icle 19(1).

i

> What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by Court in or in relation to a matter brought before it for its decisions cannot be said to affect the fundamental rights of citizens under art. 19(1).

There is trilogy of decisions of the Supreme Court of United States dealing with the constitutional right of the public access to criminal trials.

In *Gannet Co. v. De Pasquale* 443 US 368 [1979], the defendants were charged with murder and requested closure of the hearing of their motion to suppress allegedly involuntary confessions and physical evidence. The prosecution and the trial Judge agreed and said that closure was necessary. The public and the press were denied access to avoid adverse publicity. The Supreme Court addressed to the question whether the public has an independent constitutional right of access to a pretrial judicial proceedings, even though the defendant, the prosecution, and the trial Judge had agreed that closure was necessary. Explaining that the right to a public trial is personal to the defendant, the Court held that the public and press do not have an independent right to access to pretrial proceedings under the sixth amendment.

Although the Court in *Gannett* held that no right of public access emanated from the sixth amendment it did not decide whether a constitutional right of public access is guaranteed by the first amendment. This issue was discussed in *Richmond Newspapers Ins. v. Virhinia* 448 US 555 [1980]. This case involved the closure of the Court-room during the fourth attempt to try the accused for murder. The United States Supreme Court considered whether the public and press have a constitutional right to access to criminal trials under the first amendment. The Court held that the first and fourteenth amendments guarantee the public and press the right to attend criminal trials. But the *Richmond Newspapers*' case still left the question as to whether the press and public could be excluded from trial when it may be in the best interest of fairness to make such an exclusion. That question was considered in the *Globe Newspapers v. Superior Court* 457 US 596 [1982] (73 L.Ed. 248). There the trial Judge excluded the press and public from the Court room pursuant to a Massachusetts statute making closure mandatory in cases involving minor victims of sex crimes. The Court considered the constitutionality of the Massachusetts statute and held that the statute violated the first amendment because of its mandatory nature. But it was held that it would be open to the Court in any given case to deny public access to criminal trials on the ground of state's interest. Brennan J, who delivered the opinion of the Court said at (258-59):

> We agree with appellee that the first interest safeguarding the physical and psychological well-being of a minor is a compelling one. But as compelling as that interest is, it does not justify a mandatory closure rule, for it is clear that the circumstances of the particular case may determine on a case by care basis whether closure is necessary to protect the welfare of a minor victim. Among the factors to be weighed are the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victims, and the interests of parents and relatives.

It will be clear from these decisions that the mandatory exclusion of the press and public to criminal trials in all cases violates the first amendment to the United States Constitution. But if such exclusion is made by the trial Judge in the best interest of fairness to make that exclusion, it would not violate that constitutional rights.

It is interesting to note that the view taken by the American Supreme Court in the last case, runs parallel to the principles laid down by this Court in *Naresh Shridhar Mirajkar* case.

Re: Question (iv):

There remains, however, the last question formulated earlier in this judgment, namely, whether the trial Court was justified in refusing to call for the statements of witnesses recorded by the Thakkar Commission?

For a proper consideration of the question, it will be necessary to have a brief outline of certain facts.

Soon after the assassination of Mrs. Indira Gandhi, the Government of India, by notification dated 20 November 1984, constituted a commission under the Commission of Inqurity Act 1952 (the "Act"). The commission was presided over by Mr. Justice M.P. Thakkar, the sitting Judge of this Court. The commission was asked to make an enquiry with respect to the matters:

(a) the sequence of events leading, and all the facts relating to, the assassination of the late Prime Minister;

(b) whether the crime could have been averred and whether there were any lapses of dereliction of duty in this regard on the part of any of the commission of the crime and other individuals responsible for the security of the late Prime Minister;

(c) the deficiencies, if any, in the security system and arrangements as prescribed or as operated in practice which might have facilitated the commission of the crime;

(d) the deficiencies, if any, in the procedures and measures as prescribed, or as operated in practice or attending to any providing medical attention to the late Prime Minister after the commission of the crime; and whether there was any lapse or dereliction of duty in this regard on the part of the individuals responsible for providing such medical attention;

(e) whether any person or persons or agencies were responsible for conceiving, preparing and planning the assassination and whether there was any conspiracy in this behalf, and if so, all its ramifications.

The commission was also asked to make recommendations as to the corrective remedies and measures that need to be taken for the future with respect to the matters specified in clause (d) above.

On 5 December 1984, the commission framed regulations under s. 8 of the Act in regard to the procedure for enquiry. Regulation 8 framed thereon reads: "In view of the sensitive nature of the enquiry, the proceedings will be in *camera* unless the commission directs otherwise." Accordingly, the commission had its sittings in *camera*. On 19 November 1985, the commission submitted an interim report to the Government followed by the final report on 27 February 1986.

In the normal course, the Government ought to have placed the report of the commission under s. 3(4) of the Act before the House of the people within six months of the submission of the report. But the Government did not do that. The steps were taken to amend the Commissions of Inquiry Act. On 14 May 1986, the President of India promulgated Ordinance No. 6 of 1986 called the Commissions of Inquiry (amendment) Ordinance 1986 by which sub-sections (5) and (96) were introduced to s. 3 as follows:

> (5) The provisions of sub-section (4) shall not apply if the appropriate Government is satisfied that in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign state or in the public interest, it is not expedient to lay before the house of the people or, as the case may be, the Legislative Assembly of the state, the report,

or any part thereof, of the commission on the Inquiry made by the commission under sub-section (1) and issues a notification to that effect in the Official Gazette.

(6) Every notification issued under sub-section (5) shall be laid before the house of the people or, as the case may be, the Legislative Assembly of the state, if it is sitting as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its reassembly and the appropriate Government shall seek the approval of the house of the people or, as the case may be, the Legislative Assembly of the state to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the house of the people or as the case may be, the Legislative Assembly of the state makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect, as the case may be.

On 15 May 1986, the Central Government issued a notification under sub-section (5) of s. 3 stating:

The Central Government, being satisfied that it is not expedient in the interest of the security of the state and in the public interest to lay before the house of the people the report submitted to the Government on 19 November 1985 and 27 February 1986, by Justice M.P. Thakkar, a sitting Judge of the Supreme Court of India appointed under the notification of the Government of India in the Ministry of Home Affairs No. S.O. 867(B) dated 20 November 1984, hereby notifies that the said reports shall not be laid before the house of the people.

On 20 August 1986 Ordinance No. (6) was replaced by the Commission of Inquiry (Amendment) Act 1986 (Act 36 of 1986) with retrospective effect. The said notification dated 15 May 1986 was also got approved by the house of the people as required under sub-section (6) of s. 3.

We may now revert to the steps taken by the accused before the trial Court. After the prosecution examined some of the witnesses, accused No. 1 moved the Court with an application dated 5 August 1985 praying for summoning true copies of statements of all persons recorded by the Thakkar Commission and who happened to be the prosecution witnesses in the case. It was stated in the application that the statements should be summoned for the purpose of s. 145 of the Evidence Act. The trial Court rejected that application following the decision of this Court in *Ramakrishna Dalmia v. Justice Tendolkar* (*supra*). The trial Court said that the statements recorded by the commission are inadmissible in evidence in any subsequent proceedings, and cannot therefore be used for the purpose of contradicting the same witnesses under s. 145 of the Evidence Act.

Before the High Court, the accused made two applications under s. 391 of the Criminal Procedure Code. On 16 July 1986 accused Nos. 2 and 3 made an application for additional evidence. Accused No. 1 also made a similar application dated 17 July 1986. They wanted the depositions recorded and the documentary evidence received by the Thakkar Commission as additional evidence in the case. They also wanted the High Court to summon the two reports of the Thakkar Commission.

The High Court rejected both the applications in the course of the judgment which is now under appeal. The High Court has stated that it is not proper to compel production of the proceedings or the report of the commission in view of the privilege of non-disclosure provided by the Act of Parliament. The High Court also depended upon the decision of this Court in *Dalmia's* case. The decision therein was held to be an authoritative pronouncement on the scope of s. 6 of the Act and as to the utilisation of statement made by any person before the commission. The High Court held that the evidence before the commission is wholly inadmissible in any other civil or criminal proceedings except for prosecuting the person for perjury.

The principal submission before us is that the High Court has misconstrued the scope of s. 6 of the Act and misunderstood the observations in *Dalmia's* case. It is also contended that the observation in *Dalmia's* case cannot be regarded as a binding precedent since this Court was not called upon therein to examine the true scope of s. 6.

It is true that the scope of section as such did not come up for consideration in *Dalmia's* case. Das CJ, while examining the challenge to the validity of the Act and a notification issued thereunder made some observations as to matters of principle (294-295):

> The whole purpose of setting up of a commission of inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view, the recommendations of a commission of inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. From this point of view, there can be no objection even to the commission of inquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquents in future. But seeing that the commission of inquiry has no judicial powers and its report will purely be recommendatory and not effective ***proprio vigore*** **and the statement made by any person before the commission of inquiry is under s. 6 of the Act wholly inadmissible in evidence in any future-proceedings, civil or criminal."**
>
> (Emphasis supplied)

Since the argument in the above case did not traverse the scope of s. 6 of the Act, it is now necessary to call attention to the same at length. Before examining the matter, it may not be inappropriate to state that the accused in criminal trials should be given equal opportunity to lay evidence fully, freely and fairly before the Court. The Government which prosecutes an accused will lay bare the evidence in its possession. If the accused asks for summoning any specific document or thing for preparing his case, it should normally be allowed by the Court if there is no legal bar. But "the Demand", as Brennan J, of the Supreme Court of the United States, observed, "must be for production of... specific documents and should not propose any broad or blind fishing expedition." (*Clinton E. Janks v. United States* 353, US 697 = 1L Edn., 1103 at 1111. Ameer Ali J in *Nizam of Hyderabad v. A.N. Jacob* ILR XIX Cal. 52 at 64, made similar observations:

> ... he cannot call for anything and everything from anybody and everybody. The thing called for must have some relation to, or connection with the subject-matter of the investigation or enquiry, or throw some light on the proceedings, or supply some link in the chain of evidence.

These principles are broadly incorporated for the guidance of Courts under ss. 91 and 233 of the Code.

Let us turn to consider in detail the language of the critical section. s. 6 provides:

> No statement made by a person in the course of giving evidence before the commission shall subject him to, or be used against him in any civil or criminal proceedings except a prosecution for giving false evidence by such statement.

Dissecting the section, it will be clear that the statement made by a person before the commission, in the first place shall not be the basis to proceed against him. Secondly, it shall not be 'used against him' in any subsequent civil or criminal proceedings except for the purpose set out in the section itself. The single exception provided thereunder is a prosecution for giving false evidence by such statement.

The term "used against" has given rise to controversy. The Bombay High Court in *Sohan Lal v. State* [1965] AIR Bom 1 and *State of Maharashtra v. Ibrahim Mohd.* [1978] Cr LJ 1957, has regarded the observations in *Dalmia's* case as an *obiter*. It was held:

> Whether a particular statement made by a witness before the commission is used "against him" will depend on the prejudice or detriment caused or likely to cause to the person in civil or criminal proceedings or otherwise. It must, therefore, necessarily depend on the facts and circumstances relating to the use or intended use. Whether any particular prejudice or detriment can be said to result from the use of the statements will also depend on facts. Mere cross-examination under s. 145 can at the most expose his statement. That does not render the use of the statement "against him" in law because law requires him to tell the truth, the whole truth and nothing but the truth before the commission also and implies that he will be prosecuted for perjury if he tells lies." (*Maharashtra v. Ibrahim Mohd.* [1978] Cr. Law Journal 1157 at 1160.)

This line of reasoning also found favour with Assam High Court in *State of Assam v. Suprabhat Bhadra* [1982] Crl. LJ 1672. But Madhya Pradesh High Court in *Puhuoram & Ors. v. State of MP* [1968] MPLJ 629, has taken a contrary view. That High Court said that the language of s. 6 is plain enough to show that the statement made by a person before the commission of inquiry cannot be used against him for the purpose of cross-examination.

It is urged that even if the words "used against" mean preventing the use of the statement for the purpose of contradiction as required under s. 145 of the Evidence Act, there are other provisions by which the previous statement could be looked into for productive use without confronting the same to the witness. Reference is made to the first part of s. 145, sub-section (1) and (2) of s. 146 as well as ss. 157 and 159 of the Evidence Act. It is also said that the term "used Against" in s. 6 was not intended to be an absolute bar for making use of such statement in subsequent proceedings. The learned Additional Solicitor General, on the other hand, states that s. 6 was intended to be a complete protection to persons against the use or utility of their statements in any proceedings except in case of prosecution for perjury. Such protection is necessary for persons to come and depose before the commission without any hesitation. Any dilution of that protection, it is said, would defeat the purpose of the Act itself.

Before I come to consider the arguments put forward by each side, I venture to refer to some general observations by way of approach to the questions of construction of statutes. In the past, the Judges and lawyers spoke of a 'golden rule' by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust results which legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the Act and not for the Court to intervene by its innovation.

During the last several years, the 'golden rule' has been given a go by. We now look for the 'intention' of the legislature or the 'purpose' of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one

relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they own their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

For me here add a word of caution. This adventure, no doubt, enlarges our discretion as to interpretation. But it does not imply power to us to substitute our own notions of legislative intention. It implies only a power of choice where differing constructions are possible and different meanings are available.

For this purpose, we call in external and internal aids;

External aids are: the statement of objects and reasons when the bill was presented to parliament, the reports of the committee, if any, preceded the bill, legislative history, other statutes in *pari materia* and legislation in other states which pertain to the same subject matter, persons, things or relations.

Internal aids are: Preamble, scheme, enacting parts of the statutes, rules of languages and other provisions in the statutes.

The Act may now be analysed. The Act is a short one consisting of 12 sections. Section 3 provides power to the appropriate Government to appoint a Commission of Inquiry for the purposes of making an inquiry into any definite matter of public importance. Section 4 confers upon a Commission of Inquiry certain powers of a Civil Court (for example, summoning and enforcing the attendance of witnesses and examining them on oath, etc.). Section 5 empowers the appropriate Government to confer some additional powers on a Commission of Inquiry. Section 5(a) authorises the Commission to utilise the service of any officer or investigating agency for the purpose of conducting any investigation pertaining to inquiry entrusted to the Commission. section 6 confers upon persons giving evidence before the Commission protection from prosecution except for perjury. The other sections are not important for our purpose except s. 8. Section 8 provides procedure to be followed by the Commission. The Commission is given power to regulate its own procedure and also to decide whether to sit in public or in private.

The statement of objects and reasons of the original Act reads:

> It is felt that there should be a general law authorising Government to appoint an inquiring authority on any matter of public importance, whenever considered necessary, or when a demand to that effect is made by the legislature and that such law should enable the inquiring authority to exercise certain specific powers including the powers to summon witnesses, to take evidence on oath, and to compel persons to furnish information. The bail is designed to achieve this object.

It will be clear from these provisions that the Act was intended to cover matters of public importance. In matters of public importance it may be necessary for the Government to fix the responsibility on individuals or to kill harmful rumours. The ordinary law of the land may not fit in such cases apart from it is time consuming.

The Commission under our Act is given the power to regulate its own procedure and also to decide whether to sit in *camera* or in public. A Commission appointed under the Act does not decide whether to sit in *camera* or in public. A Commission appointed under the Act does not decide any dispute. There are no parties before the Commission. There is no list. The Commission is not a Court except for a limited purpose. The procedure of the

Commission is inquisitorial rather than accusatorial. The Commission more often may have to give assurance to persons giving evidence before it that their statements will not be used in any subsequent proceedings except for perjury. Without such an assurance, the persons may not come forward to give statements. If persons have got lurking fear that their statements given before the Commission are likely to be used against them or utilised for productive use on them in any other proceeding, they may be reluctant to expose themselves before the Commission. Then the Commission would not be able to perform its task. The Commission would not be able to reach the nuggets of truth from the obscure horizon. The purpose for which the Commission is constituted may be defeated.

The Court should avoid such construction to s. 6 which may stultify the purpose of the Act. Section 6 must on the other hand, receive liberal construction so that the person deposing before the commission may get complete immunity except in a case of prosecution for perjury. That is possible if the word 'against' used in s. 6 is properly understood. The meaning given in *Black's Law Dictionary* supports such construction (at p.57):

> *Against*-Adverse to, contrary... Sometimes meaning "Upon" which is almost, synonymous with word "on"...

Apart from that, it may also be noted that s. 6 contains only one exception. That is a prosecution for giving false evidence by such statement. When the legislature has expressly provided a singular exception to the provisions, it has to be normally understood that other exceptions are ruled out.

The view that I have taken gets confirmation from the report of the Royal Commission on Tribunals of Inquiry [1966]. Before referring to the report, it will be useful to have before us, the relevant provisions of the English statutes which are not materially dissimilar to our Act. There are two English statutes which may be looked into: (i) The Special Commission Act 1888; and (ii) The Tribunals of Inquiry (Evidence) Act 1921. Section 9 of the Special Commission Act 1888 provides:

> 9... A witness examined under this Act shall not be excused from answering any question put to him on the ground of any privilege or on the ground that the answer thereto may criminate or tend to criminate himself. **Provided that no evidence taken under this Act shall be admissible against any person in any civil or criminal proceeding except in the case of a witness accused of having given false evidence in any inquiry under this Act...**
> (Emphasis supplied)

Section 1(3) of the Tribunals of Inquiry (Evidence) Act 1921, provides:

> A witness before any such tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Sessions.

Section 9 of the Special Commission Act 1888 protects the witness in every respect in a prosecution for giving false evidence by such statement. It provides that the evidence given by him shall be inadmissible in any civil or criminal proceedings. Section 1(3) of the Tribunals of Inquiry (Evidence) Act 1921 provides only a limited or partial immunity to a witness. It is similar to the immunity afforded to a witness before the High Court or the Court of Sessions.

In 1966, the Royal Commission on Tribunals of Inquiry was constituted under the chairmanship of the Rt. Hon Lord Justice Salmon. The Commission was appointed to review the working of the Tribunals of Inquiry (Evidence) Act 1921, and to consider whether it should be retained or replaced by some other provision. The Commission was also authorised to suggest any changes in the Act as are necessary or desirable; and to make recommendations. The Royal Commission in its report at para. 63 recommended:

(vii): Further Immunity:

> 63. Section 1(3) of the Act of 1921 provides that a witness before any Tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Sessions. This means that he cannot be sued for anything he says in evidence e.g. if he says "A is a liar. His evidence is untrue." A cannot sue him for defamation. It does not mean however that his answer as a witness cannot be used in evidence against him in any subsequent civil or criminal proceedings. We consider the witness's immunity should be extended so that neither his evidence before the Tribunal, nor his statement to the treasury solicitor, or any documents he is required to produce to the Tribunal, shall be used against him in any subsequent civil or criminal proceedings except in criminal proceedings in which he is charged with having given false evidence before the Tribunal or conspired with or procured others to do so. This extension of the witness's immunity would bring the law in this country into line in this respect with similar provision in the legislation of Canada, Australia and India and indeed with s. 9 of the Special Commission Act 1888. It would also, in our view, be of considerable assistance in obtaining relevant evidence, for persons may be wary of coming forward for fear of exposing themselves to the risk of prosecution or an action in the Civil Courts. Moreover, the suggested extension of the immunity would make it difficult for a witness to refuse to answer a question on the ground that his answer might tend to incriminate him. Thus not only would the witness be afforded a further measure of protection but the Tribunal would also be helped in arriving at the truth.

The Royal Commission appears to have thoroughly examined the provisions as to immunity to witnesses in the legislations of Canada, Australia and India and s. 9 of the Special Commission Act 1888. The Commission has stated that the immunity provided to witnesses under s. 1(3) of the Act 1921 is insufficient for the purpose of advancing the object of the Act. It should be extended so that the statement of a witness before the Tribunal shall not be used against him in any subsequent civil or criminal proceedings except in a prosecution for perjury by giving false evidence before the Tribunal. The extension of such immunity, according to the Royal Commission, would bring s. 1(B) of the Act 1921 into line with the similar provisions in the legislations of Canada, Australia and India. The legislation in India is the Commission of Inquiry Act 1952 with which we are concerned. It is apparent that the Royal Commission was of opinion that s. 6 of our Act provides complete protection to witnesses in terms of s. 9 of the Special Commission Act 1888. It means that the statement given before commission shall not be admissible against the person in any subsequent civil or criminal proceeding save for perjury.

There is, therefore, much to be said for the observation made in *Dalmia's* case and indeed that is the proper construction to be attributed to the language of s. 6 of the Act. I respectfully affirm and re-emphasise that view.

It is needless to state that the said decisions of the High Courts of Bombay and Assam are incorrect and they stand overruled.

Having reached this conclusion, it is strictly unnecessary to fall back on the other contention raised by Counsel for the appellants.

Let us now move on to the merits of the case against each of the accused. But, before proceeding to consideration of the merits, it will be appropriate to have regard to principles and precedents followed by this Court while dealing with an appeal under art. 136 of the Constitution. There is a string of decisions laying down those principles right from 1950. In *Pritam Singh v. The State* (*supra*), Fazal Ali J, said (at 170):

> It would be opposed to all principles and precedents if we were to constitute ourselves into a third Court of fact and, after reweighing the evidence, come to a conclusion different from that arrived at by the trial Judge and the High Court.

In *Hem Raj v. State of Ajmer* (*supra*), M.C. Mahajan CJ, had this to say (at 1134):

> Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice had been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, this Court does not exercise its overriding powers under art. 136(1) of the Constitution and the circumstance that because the appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for.

More recently, in *Bhaginbhai Hirjibjhai v. State of Gujarat* (*supra*), Thakkar J, recounted (at 755):

> A concurrent finding of fact cannot be reopened in an appeal, unless it is established: first that the finding is based on no evidence or; second, that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or thirdly, the finding is based and built on inadmissible evidence, which evidence if excluded from vision, would negate the prosecution case or substantially discredit or impair it or; fourthly, some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded.

Bearing in mind these principles, let me take up the case of Balbir Singh (A2) first for consideration.

Balbir Singh: He was an officer of the Delhi Police in the cadre of sub-inspectors. He was posted on duty at the PM's residence. He was not on duty in the morning of 31 October 1984. His duty was to commence in the evening on that day at the in-gate of Akbar Road. When he reported for duty, in the usual course, he was asked to go to the security police lines. At about 3 a.m. on 1 November 1984, he was awakened from his sleep and his house was searched by SI, Mahipal Singh (PW50), Constable Hari Chand (PW17) and Inspector Shamshir Singh. Nothing except a printed book on Sant Bhindrawale (Ex. PW17A) was recovered. At about 4 a.m. he was taken to Yamuna Velodrome. He was kept there till late in the evening when he was released from, what Kochar (PW73) says, '*de facto* custody'. On 3 December 1984, he was said to have been arrested at Najafgarh bus-stand. On 4 December 1984, he was produced before the Magistrate, he refused to make a statement - confessional or otherwise. He was tried along with the other accused for having entered into a criminal conspiracy to commit the murder of the Prime Minister, Mrs. Indira Gandhi. He was convicted under s. 302 read with s. 120B, IPC and sentenced to death.

The charge-sheet contains the following accusations against Balbir Singh:

> That Balbir Singh, like other accused, had expressed his resentment openly, holding Smt. India Gandhi responsible for the "Blue Star Operation". He was planning to commit the murder of Smt. Indira Gandhi. He discussed his plans with Beant Singh (deceased) who had similar plans to commit the murder. He also shared his intention and prompted accused Satwant Singh to commit the murder of Smt. Indira Gandhi and finally discussed the matter with him on 30 October 1984.
>
> In the first week of September 1984, a falcon (Baaj) happened to sit on a tree near the main reception of the Prime Minister's house at about 1.30 p.m. Balbir Singh spotted the falcon. He called Beant Singh there. Both of them agreed that it had brought a message of the tenth

Guru of the Sikhs and they should do something by way of revenge of the "Blue Star Operation." Thereafter, they performed '*Ardas*' then and there.

These accusations are sought to be established by the testimony of SI, Madan Lal Sharma (PW13), Constable Satish Chander Singh (PW52), SI Amarjit Singh (PW44) and the confession of Satwant Singh (Ex. PW11C). The prosecution also strongly relies upon a document described as "memorandum of events" (Ex. PW26B) said to have been recovered upon the arrest of Balbir Singh on 3 December 1984. His leave applications (Ex. PW26E to E-5) and his post crime conduct as to absconding are also relied upon.

The case of Balbir Singh is that the document Ex. PW26B was not recovered from his possession as made out by the prosecution. His arrest at Najafgarh bus stand was a make-believe arrangement. He was not arrested there and indeed he could not have been arrested, since he was all along under police custody right from the day when he was taken to Yamuna Velodrome on 1 November 1984. He was not absconding and the question of absconding did not arise when he was not released at all. No question was put to him under s. 313 examination that he had absconded. It is argued that the conclusions of the High Court on all these matters are apparently unsustainable.

Before examining these contentions, it will be better to dispose of the point common to this accused and Kehar Singh (A3) relating to the validity of sentence of death awarded to them.

It is urged that there was no charge against the accused under s. 109 of IPC and without such a charge, they are liable to be sentenced only for the offence of abetment and not for the murder. Reliance is placed on the provisions of s. 129B, IPC which provides, *inter alia*, that a party to a criminal conspiracy shall be punished in the same manner as if he had abetted such offence. The contention, in my opinion, is really ill-founded. It overlooks the vital difference between the two crimes; (i) abetment in any conspiracy, (ii) criminal conspiracy. The former is defined under the second clause of s. 107 and the later is under s. 120A. Section 107, so far as it is relevant, provides:

> 107. A person abets the doing of a thing,
>
> Firstly...
>
> Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that things, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> Thirdly...

Section 109 provides:

> Whoever abets any offence, shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this code for the punishment of such abetment, be punished with the punishment provided for the offence.

Criminal conspiracy is defined under s. 120A:

> 120-A. When two or more persons agree to do, or cause to be done:
>
> (1) an illegal act, or
>
> (2) an act, which is not illegal by illegal means, such agreement is designated a criminal conspiracy;

Punishment for criminal conspiracy is provided under s. 120B:

> 120B (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this code for the punished in the same manner as if he had abetted such offence.
>
> (2) ...

The concept of criminal conspiracy will be dealt with in detail a little later. For the present, it may be sufficient to state that the gist of the offence of criminal conspiracy created under s. 120A is a bare agreement to commit an offence. It has been made punishable under s. 120B. The offence of abetment created under the second clause of s. 107 requires that there must be something more than a mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by the wordings of s. 107 (Secondly): "engages in any conspiracy... for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy..." The punishments for these two categories of crimes are also quite different s. 109 IPC is concerned only with the punishment of abetments for which no express provision is made under the Indian Penal Code. A charge under s. 109 should, therefore, be along with some other substantive offence committed in consequence of abetment. The offence of criminal conspiracy is, on the other hand, an independent offence. It is made punishable under s. 120B for which a charge under s. 109, IPC is unnecessary and indeed, inappropriate. The following observation of Das J, in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar* [1962] (supp.) 2 SCR 297 at 320, also supports my view:

> Put very briefly, the distinction between the offence of abetment under the second clause of s. 107 and that of criminal conspiracy under s. 120A is this. In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence.
>
> So far as abetment by conspiracy is concerned, the abettor will be liable to punishment under varying circumstances detailed in ss. 108 to 117. It is unnecessary to detail those circumstances for the present case. For the offence of criminal conspiracy it is punishable under s. 120B.

This takes me back to the other contentions specifically urged on behalf of Balbir Singh. Of the evidence relied upon by the prosecution, the document Ex. PW26B is said to be the most important. The High Court has accepted it "as revealing a coherent story of participation of the accused in the conspiracy." The High Court also said: "the document shows beyond doubt that Balbir Singh was all along in the picture and associated with Beant Singh and Satwant Singh." Before us, the criticisms against this document are various and varied. It may be stated and indeed cannot be disputed that the genuineness of the document is inextricably connected with the arrest and search of the accused at Najafgarh Bus Stand. The document was recovered from the accused upon arrest and search made under s. 51 of the code. If the arrest cannot carry conviction then the recovery automatically falls to the ground. Not merely that, even the allegation that the accused had absconded vanishes to thin air.

The police at the earliest moment suspected Balbir Singh as a person involved in the conspiracy to murder the Prime Minister. After midnight, they arrived at his residence. They knocked on the door and made him to get up from his bed. They searched his house and

found nothing incriminating against him. They took him to Yamuna Velodrome doubtless upon arrest. The plain fact is that Balbir Singh was kept under custody throughout the day. At 6 p.m. he was seen at the Yamuna Velodrome by Rameshwara Singh (PW51). The case of the prosecution however, is that Balbir Singh was released thereafter and he was absconding till he was arrested on 3 December 1984 at Najafgarh Bus Stand. The accused challenges this version. The Courts do not interfere in the discretion of the police in matters of arrest, search and release of persons suspected in criminal cases. But the Courts do insist that it should be done according to law. If the prosecution says that the accused was released from custody and the accused denies it, it will be for the prosecution to place material on record in support of the version. Admittedly, there is no record indicating the release of Balbir Singh from Yamuna Velodrome. The explanation given is that Yamuna Velodrome being not a police station, registers were not maintained to account for the incoming and outgoing suspects. It is hardly an explanation where life and death questions are involved.

Again, the question of absconding by the accused remains unanswered. First, there is no material to lend credence to this serious allegation. Nobody has been asked to search him. No police party has been sent to track him. No procedure contemplated under law has been taken. Second, there is no evidence from which place the accused came and landed at Najafgarh Bus Stand. Kochar (PW73) has deposed that he had secret information at 2 p.m. on 3 December 1984 that the accused was likely to visit Najafgarh Bus Stand. He went along with Sant Ram (PW35), sub-inspector of Crime Branch. There they saw the accused at the Bus Stand. Before he was arrested, Kochar personally interrogated him at the electricity office near the Najafgarh Bus Stand. The interrogation went on for more than one hour. Yet, Kochar could not locate the place from where the accused came to Najafgarh Bus Stand. Upon arrest, it is said that the police have recovered certain articles including Ex. PW26B (Ex. PW35A). But there is no independent witness for the seizure memo. Third, no question as to absconding was put to the accused in the examination under s. 313 of the Code. What was put to him under question No. 52 was that he had remained absent from duty from 4 November 1984 till 3 December 1984. That is not the same thing to ask that the accused had absconded during that period. For that question, the accused replied that he was under police detention from 1 November 1984 till 3 December 1984 and there was no question of his attending the duty during that period. He has also stated that he was formally arrested on 3 December 1984 and till then he was under police detention.

Realising the weakness in this part of the case, learned Additional Solicitor General relied upon the averments in the application moved by the police for remanding the accused to police custody. It was also stated therein that Balbir Singh was arrested at Najafgarh Bus Stand on 3 December 1984. Shri S.L. Khanna, Additional CMM, remanded the accused to police custody till 6 December. The order of remand was signed by the accused. It is argued that the accused being a police officer did not object to the allegations made against him in the remand application. I do not think that this contention requires serious consideration. The averments in the remand application are only self-serving. The silence of the accused cannot be construed as his admission of those allegations.

There is yet another feature to which I should draw attention. The prosecution wants to establish the recovery of Ex. PW26B from the accused by other contemporaneous document. Reference in this context is made to the Malkana Register of the Tughlak Road Police Station. Entry 986 in the Malkana Register, according to the learned Additional Solicitor General, contains verbatim copy of the seizure memo (Ex. PW35A) and it is indicative of the fact that Ex. PW26B was recovered from the accused upon his arrest and search. Here again there is

some difficulty. There is an endorsement in the Malkana Register stating that the DTC ticket which the accused carried and the paper containing the dates in English (Ex. PW26B) were not deposited. Malkana Register, therefore, is of little assistance to the prosecution.

In view of these infirmities, the arrest of the accused at Najafgarh Bus Stand does not inspire confidence. This by itself is sufficient to discard the document Ex. PW26B. Let me also examine the contents of the document which has been highlighted by the High Court. The document can be taken to be in the handwriting of Balbir Singh to avoid reference to unnecessary evidence. But that in my opinion, does not advance the case of prosecution. The document is a sheet of paper in which we find the following entries:

June 1984

- Army operation
- felt like killing
- put on duty outside No. 1, S.J. Road again at No. 1 S.J. Road
- Dalip Singh
- Proceeded on leave for 30 days July 1984
- Dalip & Virender Singh visited my house.
- Dalip took me to Gurbaksh's house where Santa Singh also met.
- Dalip Singh and Gurbaksh visited my house Mavalankar Hall.
- Went to Ghaziabad
- I visited Gurbaksh Singh's house
- Back from leave August 1984
- Met Amarjit Singh and Beant Singh
- Dalip Singh, Virender Singh etc. met at Bangala Sahib
- Mavalankar Hall/Gurupurab at Bangala Sahib

3rd Week

- Harpal Singh/Virender
- Beant Singh/Eagle meeting at decision to start constructive work
- Beant Singh

September 1984

- Visited Gurbaksh Singh's house
- Dalip and a boy Narinder Singh/Virender
- Leave for 4/5 days

26-1000 Visited Gurbaksh's house and learned about the boy.

October 1984

- Narinder Singh
- Leave for 4/5 days

22-Beant Singh

- Leave for 4 days

- Dalip Singh and Mohinder Singh visited

28-

30-Satwant

31-

If this document is an incriminating piece of evidence, as the High Court has observed, it is rather baffling why the accused who was suspected to be a conspirator to murder the Prime Minister of the country, should carry the document wherever he goes and that too at a place where there were reprisal killings. The accused is not a rustic person. He is a sub-inspector of police with several years of service to his credit. He must have investigated so many crimes. He must have anticipated the danger of carrying incriminating document when he was already suspected to be a party to the deadly conspiracy. Unable to compromise myself with any reason, I sought the assistance of learned Additional Solicitor General. He too could not give any explanation. Indeed nobody could offer even a plausible explanation for this unusual conduct attributed to the accused. To my mind, to say that the absconding accused - sub-inspector was found at a public place in the national capital with an incriminating document which may take him to gallows is to insult the understanding, if not the intelligence, of police force of this country.

This is one aspect. The other aspect relates to the assessment of inherent value of the document. A bare reading of the document, as rightly urged for the accused, shows that this is a document composed at one time with the same ink and same writing instrument. The corrections, the fixing of months and dates with the nature of entries therein apparently indicate that the document was not kept as a contemporaneous record of events relating to Balbir Singh. The fact that it was not in the possession of the accused when his house was searched in the early hours of 1 November 1984 also confirms this conclusion.

In the document, there is no reference to killing of the Prime Minister. In fact, except for a "felt like killing" in early June as an immediate reaction to the "Blue Star Operation", even the manifestation of this feeling does not exist anywhere in subsequent part of the document. The document refers to bare meetings, visits of persons, or visiting somebody's house. It is, however, not possible to find out to whom the document was intended to be used.

In the document, Beant Singh is referred to at four places. At one place, there is a reference to Beant Singh with eagle (not falcon). The cross mark of X closely followed by long arrow mark in the document indicates the indecision of the author or somebody is straining his memory. There is no reference to a joint '*Ardas*' or a message for revenge associated with the appearance of eagle. The entry does not suggest that the author had anything to do with eagle. It is something between Beant Singh alone and the eagle. It is significant that there is no reference to Beant Singh and his plans to murder the Prime Minister. There is no reference to bombs or grenades associated with the plans to eliminate the Prime Minister before 15 August 1984. There is no reference to any commission of any offence. There is no reference about Beant Singh conspiring with Balbir Singh. There is no reference to Kehar Singh at all. If Balbir Singh was a party to the conspiracy with Beant Singh, the date on which Beant Singh had placed the murder of Mrs. Gandhi, that is 25 October 1984 as written in Ex. PW39 ought to have been noted in Ex. PW26B. We do not find reference to Satwant Singh against 30 October and it must be with reference to the evidence of Constable Satish Chander Singh (PW52) whose evidence on Court of law could believe. PW52 was a Sentry

in the Prime Minister's security. According to him, Balbir Singh was on duty on 30 October 1984 at a distance of about 5-7 steps from his point of duty. He states that Satwant Singh came to meet Balbir Singh at 8 p.m. on that day. He further states that they talked something in Punjabi which he could not follow, as he did not know Punjabi. The only one entry which makes a reference to killing is the second entry. It refers to "felt like killing". But one does not know who "felt like killing" and killing whom? It may be somebody's reaction to the "Blue Star Operation". If the document is read as a whole, it does not reveal anything incriminating against Balbir Singh.

Before considering the other matters against Balbir Singh, it will be useful to consider the concept of criminal conspiracy under ss. 120A and 120B of IPC. These provisions have brought the law by making the overt-act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well-settled, the following passage from *Russel on Crime* (12 Edn., Vol. 1, 202) may be usefully noted:

> The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, *per se*, enough.

Glanville Williams in the "*Criminal Law*" (2nd Edn., 382) explains the proposition with an illustration:

> The question arose in an lowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for "concert of action", no agreement to "cooperate.

Coleridge J, while summing up the case to the jury in *Regina v. Murphy*, (173 Eng. Reports 508) pertinently states:

> I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it with a view to the attainment of the object which they were they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, "Had they this common design, and did they pursue it by these common means - the design being unlawful?"

It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to ss. 120A and 120B IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.

Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more

often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must, enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand (*Criminal Law Review* 1974, 297 at 299) explains the limited nature of this proposition:

> Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that is unnecessary to prove that the parties "actually came together and agreed in terms" to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done.

I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

It is suggested that in view of s. 10 of the Evidence Act, the relevancy of evidence in proof of conspiracy in India is wider in scope than that in English Law. Section 10 of the Evidence Act introduced the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. Section 10 reads:

> 10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

From an analysis of the section, it will be seen that s. 10 will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a *prima facie* evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such *prima facie* evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it. It is true that the observations of Subba Rao J, in *Sardar Sardul Singh Caveeshar v. State of Maharashtra* (*supra*) lend support to the contention that the admissibility of evidence as between co-conspirators would be liberal than in English Law. The learned Judge said (at 390):

> The evidentiary value of the said acts is limited by two circumstances, namely that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention"

> is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English Law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it...

But, with respect, the above observations that the words of s. 10 have been designedly used to give a wider scope than the concept of conspiracy in English Law, may not be accurate. This particular aspect of the law has been considered by the Privy Council in *Mirza Akbar v. King Emperor* [1940] AIR PC 176, where Lord Wright said that there is no difference in principle in Indian Law in view of s. 10 of the Evidence Act.

The decision of the Privy Council in *Mirza Akbar's* case has been referred to with approval in *Sardul Singh Caveeshar v. The State of Bombay* [1958] SCR 161, where Jagannadhadas J, said:

> The limits of the admissibility of evidence in conspiracy case under s. 10 of the Evidence Act have been authoritatively laid down by the Privy Council in *Mirza Akbar v. the King Emperor* (*supra*). In that case, their Lordships of the Privy Council held that s. 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under s. 10 of the Evidence Act of "anything said, done or written, by any one of such person" (i.e. conspirators) must be "in reference to their common intention." But their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well-known principle above enunciated.

In the light of these principles, the other evidence against Balbir Singh may now be considered. The High Court has summarised that evidence (leaving out of account the confession of Satwant Singh and the evidence of Amarjit Singh) as follows:

> Summing up, then, the evidence against Balbir Singh, leaving out of account for the time being the confession of Satwant Singh and the evidence of Amarjit Singh, the position is as follows: He was an officer on security duty at the PM's house. He knew Beant Singh and Satwant Singh well. He shared the indignation of Beant Singh against Smt. Gandhi for 'Operation Blue Star' and was in a mood to avenge the same. He went on leave from 25 June 1984 to 26 July 1984. On his return he met Beant Singh and Amarjit Singh. He was present at the occasion of the appearance of the eagle and their association on that date is borne out by Ex. PW26B. He is known to have talked to Satwant Singh on 30 October 1984...

I do not think that the High Court was justified in attaching importance to any one of the aforesaid circumstances in proof of the conspiracy. The High Court first said, Balbir Singh was an officer on security duty at the PM's house. But, like him, there were several Sikh officers on security duty at the PM's house. It was next stated, Balbir Singh knew Beant Singh and Satwant Singh well. Our attention has not been drawn to any evidence to show intimacy between Balbir Singh and Beant Singh or between Balbir Singh and Satwant Singh. The High Court next said that Balbir Singh shared the indignation of Beant Singh against Smt. Gandhi and was in a mood to avenge for the "Blue Star Operation." There is no acceptable evidence in this regard. Form the testimony of SI, Madan Lal Sharma (PW13), all that we could gather is that after the "Blue Star Operation", Balbir Singh was in agitated mood and he used to say that the responsibility of damaging 'Akal Takht' lies with Smt. Gandhi and it would be avenged by them. This is not to say that Balbir Singh wanted to take revenge against the Prime Minister along with Beant Singh. The High Court did not take into consideration such resentment expressed by Kehar Singh (A3) and indeed it would be proper not to take notice of such general dissatisfaction. It is not an offence to form

one's own opinion on governmental action. It is on record that some members of the Sikh community felt agitated over the "Blue Star Operation." The resentment was also expressed by some of the Sikh employees of the Delhi Police posted for PM's security. In fact, the charge-sheet against all the accused is founded on those averments. Amarjit Singh (PW44) specifically refers to this in the course of his evidence. Resentment of the accused on "Blue Star Operation" should, therefore, be excluded from consideration. The High Court next depended upon the earned leave taken by Balbir Singh for the period from 5 June to 26 July 1984. The High Court rightly did not give significance to casual leave applications of Balbir Singh (Ex. PW26E to E5). I fail to see why taking of earned leave should assume importance. There is no material that Balbir Singh took earned leave for any sinister purpose or design. There is no evidence that during the said period, he met Beant Singh or anybody else connected with the conspiracy. It is, therefore, totally an innocuous circumstance. The High Court next said that Balbir Singh, on his return from leave, met Beant Singh and Amarjit Singh. No other specific meeting has come to light except the meeting referred to by Amarjit Singh (PW44) which I will presently consider. The High Court lastly relied upon the act of offering '*Ardas*' to falcon on its appearance at the PM's house in the first week of September 1984. This is also from the evidence of Amarjit Singh (PW44). Assuming that falcon did appear and sat on a tree in the PM's house and that Beant Singh and Balbir Singh did offer '*Ardas*' on the occasion, there is, as the High Court has observed, "nothing unusual or abnormal about the incident". The sanctity of the falcon as associated with the Tenth Guru is not denied. They offered '*Ardas*' in the presence of so many class IV employees in the PM's house. The last act of Balbir Singh, referred to by the High Court, was his meeting with Satwant Singh on 30 October 1984. That has been referred to by Satish Chander Singh (PW52), whose evidence as earlier seen has got only to be referred to be rejected. In my opinion, all the facts and circumstances aboverecited are either irrelevant or explainable. No guilty knowledge of the contemplated assassination of the Prime Minister could be attributed to Balbir Singh on those facts and circumstances.

It now remain to be seen whether the evidence of Amarjit Singh (PW44) is acceptable or whether it is inherently infirm and insufficient. There are grave criticisms against this witness. I will only examine some of them. The relationship between him and Balbir Singh was anything but cordial. It was indeed casual. They were not on visiting terms. Amarjit Singh was not even invited to attend the marriage of Balbir Singh. That was the type of connection that existed between them. Yet, Amarjit Singh deposes that Balbir Singh and Beant Singh used to keep him informed regularly about their plan of action to murder the Prime Minister. He wants the Court to believe that he was in a position to advise the conspirators against any such move. It is too difficult to accept this self styled advisor. As a faithful security officer, he was duty bound to alert his superiors about any danger to the Prime Minister. He knew that responsibility as he admits in his evidence, but failed to perform his duty. To place reliance on his testimony would be to put a premium on his irresponsibility.

The police have recorded three statements from Amarjit Singh on three different dates. The first statement (Ex. PW44DA) was recorded on 24 November 1984. After 25 days, the second statement (Ex. PW44DB) was recorded on 19 December 1984. Both were under s. 161 of the code. Again on 21 December 1984, the third statement (Ex. PW44A) under s. 164 of the code came to be recorded. In the first statement, there is no express involvement of Balbir Singh. The second statement, according to the witness, was recorded at his own instance. He deposes before the Court:

> It did not occur to me that assassination was the handwork of Balbir Singh and Kehar Singh after I had learnt about the firing and death of Smt. India Gandhi. I on recalling earlier talk realised on 24 November 1984 that the assassination of Mrs. Indira Gandhi was the handwork of Shri Balbir Singh and Shri Kehar Singh. Then I went to Shri R.P. Sharma who recorded my statement on 24 November 1984. It is correct that I recall things bit by bit. It is correct that there is a difference in my statement PW44DA and PW44DB. It is because many questions were not put to me earlier and, therefore, I did not mention them in my first statement.

He thus admits that there is difference between the first and second statements. But the High Court said that there is no improvement or after-thought so as to implicate Balbir Singh. The approach of the High Court appears to be incorrect. Amarjit Singh (PW44) states before the Court:

> .... In the first week of August 1984, I had a talk with Beant Singh. Then he told me that he would not let Mrs. Indira Gandhi unfurl the flag on 15 August. Shri Balbir Singh also used to tell me that if he could get remote control bomb and his children are sent outside India, then he also could finish Mrs. Indira Gandhi. I used to think that he was angry and I used to tell him that he should not think in these terms...
>
> In the third week of October 1984, Balbir Singh told me that Beant Singh and his family have been to Golden Temple along with Kehar Singh, her Phoopha. He further told that SI Beant Singh and Constable Satwant Singh had taken *Amrit* in sector VI, R.K. Puram, New Delhi at the instance of Shri Kehar Singh.

In the first statement (Ex. PW44DA), there is no reference to Balbir Singh telling the witness that if he could get remote control bomb and his children are sent outside India, he could also finish Mrs. Indira Gandhi. There he has stated:

> In the end of September 1984, SI Balbir Singh met me once in the Prime Minster's house and told me that Beant Singh wanted to kill the Prime Minster before 15 August. He (Beant Singh) had agreed to kill her (Prime Minister) with a grenade and remote control but this task was to be put off because the same could not be arranged, actual words being 'In Dono Cheezon Ka Intezam Nahin Ho Saka Is Liye Batt Tal Yaye.

Again in the first statement (Ex. PW44DA) what he stated was:

> In the third week of October 1984, Beant Singh, SI met me and told me that he had procured one constable, actual words being "October 1984 Ke Teesre Hafte Mein Beant Singh Mujhe Mila Aur Usne Bataya Ke Usne Ek Sipahi Pataya Hai' and that now both of them would put an end to Smt. India Gandhi's life very soon.

The discrepancies between the first version and the evidence in Court is not immaterial. They are substantial and on material points. The witness is putting the words of Beant Singh into the mouth of Balbir Singh and thereby creating circumstances against the latter.

Lastly, the reference is made to the confession of Satwant Singh (Ex. PW11C) to support the prosecution version. But it is as much a bad step as others in this case. The confession of a co-accused could be used only to lend assurance to the conclusion on the acceptable evidence against the accused. When by all the testimony in the case, Balbir Singh's involvement in the conspiracy is not established, the confession of Satwant Singh cannot advance the prosecution case. Even otherwise, the reference in the confession as to the conspiracy between Balbir Singh was not within the personal knowledge of Satwant Singh. He refers to Beant Singh consulting Balbir Singh and "advising" to kill PM. It is not clear who told him and when? Such a vague statement is of little use even to lend assurance to any acceptable case against Balbir Singh.

In my judgment, the evidence produced by the prosecution against Balbir Singh is defective as well as deficient. It is safer, therefore, to err in acquitting than in convicting him.

Kehar Singh (A3): Kehar Singh was an assistant in the directorate general of supply and disposal New Delhi. The case against him is: That he was a religious fanatic. He had intense hate against Mrs. India Gandhi for causing damage to the Akal Takht by the "Blue Star Operation". He was in a position to influence Beant Singh, since he was the uncle of Beant Singh's wife called as 'Poopha'. He converted Beant Singh and through him Satwant Singh to religious bigotry. He made them to undergo "Amrit Chakhan Ceremony " on 14 October 1984 and 24 October 1984 respectively at Gurudwara, R.K. Puram, New Delhi. He also took Beant Singh to Golden Temple, Amritsar on 20 October 1984.

The prosecution, in support of the case that he was a party to the conspiracy to murder Mrs. Indira Gandhi, relied on the following:

(1) Ujagar Sandhu incident;

(2) Darshan Singh incident;

(3) Amrit Chakhan ceremony; and

(4) Amritsar trip.

Besides, the prosecution relied upon his reaction to "Blue Star Operation", attendance in office, post crime conduct, and a pamphlet in "Gurumukhi" captioned "Indira De Sikh". The recovery of gold 'Kara' and gold ring belonging to Beant Singh from the residence of this accused was also depended upon.

Both the Courts have generally accepted the prosecution version and held that the conspiracy to assassinate Mrs. Indira Gandhi was hatched out by all the three persons, that is, Kehar Singh, Beant Singh and Satwant Singh.

I will first try to eliminate the irrelevant evidence against this accused. The prosecution examined three witnesses to prove the reaction of the accused to "Blue Star Operation". O.P. Sharma (PW31), Darshan Singh Jaggi (PW32), and Krishan Lal Uppal (PW33). These witnesses have testified that Kehar Singh was very unhappy at the consequences of "Blue Star Operation" and he considered that Smt. Gandhi was responsible for the same. In fairness to the accused, it shall be kept out of account for the reasons given by me while discussing the case of Balbir Singh. I shall also exclude from consideration the pamphlet captioned "Indira De Sikh" (Ex. P53) and the connected evidence of Raj Bir Singh (PW54), Bal Kishan Tanwar, ACP (PW63) and Daya Nand (PW66). That pamphlet in "Gurumukhi" no doubt, contains vitriolic attack on Mrs. Indira Gandhi. But it was recovered from an open drawer of the office table of Kehar Singh when he was not in office. It is a printed matter. It does not show that Kehar Singh was the author of it. Nor there is any evidence to indicate that Kehar Singh has had anything to do with it.

I shall not take notice of "Darshan Singh incident" either. It was alleged to have occurred in the Gurudwara, Moti Bagh, New Delhi, a couple of days before Raksha Bandhan day (18 August 1984). It appears that there was a kirtan of Prof. Darshan Singh, who spoke very movingly about the consequences of "Blue Star Operation." Kehar Singh and Beant Singh were said to be present on the occasion. After hearing the speech of Prof. Darshan Singh, Beant Singh was found to be sobbing. Thereupon, Kehar Singh told him that he should not weep, but take revenge. This has been spoken to by Inder Bir Singh (PW68). This incident

has a story behind. In the newspaper 'Tribune' dated 25 November 1984, there was an article (Ex. D62X) written by certain Prabhojot Singh. The article goes by the headline 'Profile of an Assassin'. It was written there in:

> There was a sudden transformation in the thinking of Beant Singh after the Army action. He started accompanying his uncle Kehar Singh, an assistant in the office of the Director General Supplies and Disposal to Gurudwara Moti Bagh. In July, a noted ragi from Punjab performed "Virag Katha" at the Gurudwara. Beant Singh was moved and reportedly starting crying. It was at this stage, Kehar Singh told him not to cry, but to take "revenge".

The investigating agency has admittedly secured that Newspaper well in time. It was preserved in their office file. K.P. Sharma (PW70) has deposed to this. But, he examined PW68 only on 3 July 1985, that is, after the accused were committed to take their trial. It is said that the news item in Tribune is very vague and despite the best efforts, none except PW68 could be secured till 3 July. This is unacceptable. The said article furnishes sufficient leads; like "Virag Katha" noted Ragi, Moti Bagh Gurudwara, the month of July, Kehar Singh and Beant Singh together attending the function, etc. The author of the articles is Prabhojot Singh. The investigating officer could have got some more particulars if Prabhojot Singh had been approached. But nobody approached him. Nor anybody from the said Gurudwara has been examined. The function in which the noted Prof. Darshan Singh Ragi participated could not have been an insignificant function. A large number of local people, if not from far off places would have attended that function. No attempt appears to have been made in these directions to ascertain the truth of the version given in the 'Tribune'. PW68 is a solitary witness to speak about the matter. He claims to know Kehar Singh but not Beant Singh. It is not safe to accept his version without corroboration.

Let me now descend to the relevant material against the accused. 'Ujagar Sandhu' incident is relevant and may be taken note of. The incident is in connection with celebration of the birthday of a child in Sandhu's house to which Kehar Singh alone was invited but not Beant Singh. Kehar Singh, however, persuaded Beant Singh and Mrs. Bimla Khalsa (PW65) to accompany him. They went together and participated in the function. Bimla Khalsa swears to this. It is common ground that there were inciting and provocating *Bhajans* were in the context of destruction of *Akal Takhat* by the "Blue Star Operation". But it is argued that there is no evidence that Beant Singh and his wife were deliberately taken by Kehar Singh to expose them to provocative *Bhajans*. There may not be any such evidence, but it may not be *non-sequitur* when one takes an uninvited guest to such function in the circumstances of this case.

The incident on 17 October 1984 in the house of Beant Singh to which Bimla Khalsa testifies, is more positive. It plainly indicates that Kehar Singh and Beant Singh were combined and conspiring together. She has deposed that Kehar Singh came to her house and was closeted with Beant Singh on the roof for about 18/15 minutes. There was hush hush talk between them which could not be over heard by Bimla Khalsa, as she was in the kitchen. That evoked suspicion in her mind. She did consider if I may use her own words "their talk as something secret". There, then she enquired from Kehar Singh "as to what they were talking thereupon?" Kehar Singh replied that the talks were "with regard to making somebody to take Amrit". Bimla Khalsa remarked: "That taking Amrit was not such a thing as to talk secretly." She was perfect right in her remark. There cannot be a secret talk about Amrit taking ceremony. It is a religious function. Kehar Singh might have realised that it would be difficult to explain his conduct without exposing himself. He came with the cryptic reply:

> There was noting particular.

Bimla Khalsa further deposed that on the same evening Kehar Singh took meals in her house along with her husband and Satwant Singh who later joined them.

Apparently, Beant Singh did not like his wife enquiring about the exchange of secret information between him and Kehar Singh. On 20 October 1984, when they were in Amritsar, Beant Singh had asked his wife why she had questioned Kehar Singh as to what they were talking on the roof on 17 October 1984.

It may be pertinently asked: Why did Kehar Singh and Beant Singh suppress the conversation? Why did Kehar Singh give such reply to Bimla Khalsa? If the conversation related to taking of Amrit by Beant Singh or his wife, there was no necessity to have a secret talk, since Beant Singh and Bimla Khalsa had already taken Amrit by then. Kehar Singh knew it and in fact he had accompanied Bimla Khalsa for that ceremony. The said conversation, as the High Court has observed could be only to further the prosecution of the conspiracy. Satwant Singh later joining them for meals lends credence to this conclusion.

An endeavour is made to impeach Bimla Khalsa, first on the ground that she turned hostile, and second, that she was examined belatedly. I must state that merely because she turned hostile, her evidence cannot be discarded. That is a well accepted proposition. She has no axe to grind against any person. She gains nothing by telling falsehood or incorrect things against Kehar Singh. She has revealed what she was told and what she had witnessed on 17 October 1984 in her own house. There is, therefore, no reason to discard that part of her testimony. As to the second complaint, it is true that the police did not record her statement immediately after the incident. That is understandable. She has lost her husband. She was in immeasurable grief. She ought to be allowed time to compose herself. Both the objections raised against her testimony are, therefore, not sound.

Beant Singh appears to have planned to murder Mrs. Gandhi on 25 October 1984. It has been indicated by his own writing on the text of the '*Vak*' recovered on search of his house at 3 a.m. on 1 November 1984. Balraj Nanda (PW16) who searched his house along with others recovered a book under the title "*Bhindranwale Sant*" (Ex. P36). Inside the book, a copy of 'Hukamnama' (*Vak*) dated 13 October 1984 written in saffron ink was found (Ex. P39). On the reverse of Exd. P39, the following two dates are written:

25 October 1984 - I Yes. 26 October 1984 - Yes 8 a.m. to 10 a.m..

This writing has been proved to be that of Beant Singh. It has been established by the evidence of Bimla Khalsa and the testimony of other witnesses. Bimla Khalsa has stated that Ex. P39 is in the handwriting of Beant Singh on both sides thereof. The evidence of P.C. Maiti (PW24), Additional Director, Institute of Criminology and Forensic Science, New Delhi and S.K. Sharma (PW25), Assistant Director (Documents) in the same Institute also confirms that fact.

Against this background, the visit to Amritsar assumes importance. On 20 October 1984, Kehar Singh and Beant Singh along with their family members went to Amritsar. There they stayed in the house of one Mr. M.R. Singh (PW53). Bimla Khalsa states that they reached Amritsar at 2-3 p.m. and went to Darbar Sahib Gurudwara in the same evening. While ladies and children were listening to *kirtan*, Beant Singh and Kehar Singh wanted to accompany them to see the *Akal Takht*, but she was told to see the same on the next morning. What happened on the next day is still more curious. In the early hours, PW53 was woken up by Kehar Singh and told that he would attend "*Asa ki War-Kirtan*" in Darbar Sahib. So stating, he went along with Beant Singh. The ladies and children were left behind. They went to

Darbar Sahib at 8 a.m. along with PW53. They returned home at 11 a.m. and had lunch with PW53. Beant Singh and Kehar Singh did not join them for lunch, nor they returned to the house of PW53. PW53 took the ladies and children to Railway Station to catch the train for the return journey. Beant Singh and Kehar Singh appeared there and all of them left by the same train. What is significant to note herein is about the relative character of Kehar Singh and Beant Singh. Even at the most sacred place they remained isolated from their wives and children. No wonder, birds of the same feather fly together.

It is suggested that Kehar Singh being an elderly person and a devout religious Sikh was keeping company with Beant Singh to dissuade the latter from taking any drastic action against Mrs. Gandhi. I wish that Kehar Singh had done that and given good advice to Beant Singh. He had the opportunity to bring Beant Singh back to the royal path, but unfortunately, he did nothing of that kind. If he had not approved the assassination of the Prime Minister, Beant Singh would not have grafted Satwant Singh, he would have taken the assistance of Bimla Khalsa. He did not do that even. She was deliberately not taken into confidence. She was in fact kept in darkness even though she was inquisitive to know their secret talk.

It is true that there is no substantive evidence from the testimony of Bimla Khalsa that Beant Singh took Amrit on 14 October 1984 at the instance of Kehar Singh. Bimla Khalsa has only stated "I cannot say if on 14 October 1984, Beant Singh had taken Amrit at the instance of Kehar Singh in sector VI, Gurudwara, R.K. Puram, but on 13 October he was telling me that he was going to take *Amrit.*" The fact, however, remains that Beant Singh took Amrit on 14 October 1984. Kehar Singh was undisputedly present at the ceremony in which Bimla Khalsa took *Amrit*. It may not be, therefore, unreasonable to state that he must have been present when Beant Singh also took *Amrit.* The recovery made from his house supports this inference. It is said that while taking *Amrit* or thereafter, the person is not expected to wear gold ornaments. Beant Singh had gold 'kara' (Ex. P27) and ring (Ex. P28). These two articles were recovered by the investigating agency from the house of Kehar Singh. That is not disputed before us. Beant Singh must have entrusted the articles to Kehar Singh at the time of his taking *Amrit*. It also shows the significant part played by Kehar Singh in taking *Amrit* by Beant Singh.

It is true that taking *Amrit* by itself may not have any sinister significance. It is a religious ceremony and '*Amrit*' is taken only to 'lead a life of spartan purity giving up all worldly pleasures and evil habits'. But, unfortunately, the assassins have misused that scared religious ceremony for ulterior purpose.

The post crime conduct of Kehar Singh is conclusive of his guilt. He was cognizant of all the details of the coming tragedy and waiting to receive the news on that fateful day. That would be clear from the testimony of Nand Lal Mehta (PW59) who was an office colleague of Kehar Singh. He has deposed that Kehar Singh had met him in the third floor corridor of the office at about 10.45 a.m. on 31 October 1984. By that time, the news of the murderous attack on the Nation's Prime Minister came like a thunderbolt from a clear sky. The messenger had told that 'somebody' had shot at Mrs. Gandhi. PW59 then enquired from Kehar Singh as to what had happened. Kehar Singh replied that "whosoever would take confrontation with the Panth, he would meet the same fate." So stating, he went away. It may be noted that at that time, there was no specific information to the outside world whether any Sikh had shot the Prime Minister or anybody else. Unless Kehar Singh had prior knowledge, he could not, have reacted with those words.

To sum up: His close and continued association with Beant Singh; his deliberate attempt to exclude Mrs. Bimla Khalsa from their company and conversation; his secret talk with Beant Singh followed by taking meals together with Satwant Singh; his keeping the gold 'kara' and 'ring' of Beant Singh; and his post crime conduct taken together along with other material on record are stronger as evidence of guilt than even direct testimony. I agree with the conclusion of the High Court that Kehar Singh was one of the conspirators to murder Mrs. Gandhi, though not for all the reasons stated.

Satwant Singh (A1): he was a constable in the Delhi Police recruited on 12 January 1982. After training, he was posted in the Fifth Battallion of the Delhi Armed Police (DAP). After further commando training, he was posted in the Second Battallion of the DAP. Thereafter he was posted in the 'C' company of the batallion at the lines of Teen Murti Lane where he reported for security duty at the Prime Minister's house on 2 July 1983.

There are three charges against Satwant Singh:

(i) Section 302 read with s. 120B and 34 IPC for murdering the Prime Minister Mrs. Indira Gandhi;

(ii) Section 307 IPC for the attempted murder of Rameshwar Dayal (PW10); and

(iii) Section 27 of the Arms Act.

In proof of these charges, the prosecution have examined three eye-witnesses to the occurrence. Narain Singh (PW9), Rameshwar Dayal (PW10) and Nathu Ram (PW64). Beside, Sukhvir Singh (PW3), Raj Singh (PW15), Deshpal Singh (PW43) and Ganga Singh (PW49) have also been examined.

On 31 October 1984, in the usual course, Satwant Singh was put on security at Beat No. 4 in the Akbar Road House (not at the TMC Gate). This has been confirmed by the daily dairy maintained at Teen Murti (Ex. PW14C) - (Entry No. 85). Raj Singh (PW15) has testified to this entry. Satwant Singh was given arms and ammunition. He was issued SAF Carbine Sten-gun) having Butt No. 80 along with 5 magazines and 100 live rounds of 9 mm ammunition. In acknowledgment thereof, he has signed the register (Ex. PW3A). Sukhvir Singh (PW3) has deposed to this. With the said arm and ammunition, Satwant Singh left Teen Murti Lines at about 6.45 a.m. to take up his duty at Beat No.4. but he did not go to that spot. The case of the prosecution is that Satwant Singh had got exchanged his place of duty to carry out the conspiracy he had with Beant Singh to murder Mrs. Gandhi. But, on the other hand, the accused states that he had been "decoyed" to the TMC Gate by certain persons; that he was injured by the cross firing; that he fell down and was not in a position to shoot the Prime Minister or anybody. The fact, however, remains that Satwant Singh got exchanged his place of duty with that of Deshpal Singh (PW43). It appears that one Head Constable Kishan Lal No. 1109 allowed the sentries to exchange their places since Satwant Singh was suffering from loose motion and TMC Gate being nearer to a laterine. So, Deshpal Singh took up position at Beat No. 4 while Satwant Singh at TMC Gate.

Three eye-witnesses to the occurrence; (i) Narain Singh; (ii) Rameshwar Dayal; and (iii) Nathu Ram corroborate with each other on all material particulars. They had accompanied the Prime Minister on the fateful day. They were able to see vividly, describe correctly and identify properly the persons who gunned down Mrs. Gandhi. Both the Courts below have accepted them as natural and trustworthy witnesses. Such a conclusion based on appreciation of evidence is binding on this Court in the appeals under art. 136. I may, however, briefly refer to their evidence.

Narain Singh (PW9) is a Head Constable. He was on duty from 7.30 a.m. on 31 October 1984. He has deposed that at 8.45. a.m. he came to know that the Prime Minister had to go to No. 1 Akbar Road, to meet certain foreign T.V. representatives. He took up an umbrella and remained ready to follow the Prime Minister. According to him at 9.10 a.m. Smt. Gandhi emerged out of the house followed by Mr. R.K. Dhawan Private Secretary and Nathu Ram (PW64). He has stated that he moved over to the right side of Mrs. Gandhi holding the umbrella to protect her against the sun. They proceeded towards the TMC Gate. The TMC Gate was kept open, where Beant Singh was on the left side and Satwant Singh on the right side. When they were about 10 or 11 feet from the TMC Gate, Beant Singh took out his revolver from his right dub and fired at Mrs. Gandhi. Immediately, Satwant Singh also started firing at Mrs. Gandhi with his Sten-Gun. Mrs. Gandhi fell down. He threw away the umbrella, took out his revolver and dashed towards Beant Singh to secure him. He saw Mr. Bhatt, the personal guard of Mrs. Gandhi and ITBP personnel arriving there and securing Satwant Singh and Beant Singh. He noticed that Rameshwar Dayal (PW10) was also hit by bullets. He has further stated that the doctor came running. Mrs. Sonia Gandhi too. They lifted Mrs. Gandhi and placed in the rear seat of the escort car that was brought there. Mrs. Gandhi was taken to the AIIMS accompanied by the doctor and Mrs. Sonia Gandhi on the back seat and Mr. Bhatt, Mr. Dhawan and Mr. Fotedar on the front seat of the car. He also went to the hospital where Kochar (PW73) came and took his statement. That statement formed the basis of the FIR in this case.

a *b* *c* *d*

There can be little doubt as to the presence of Narain Singh at the spot. His evidence receives full corroboration from the other two eye-witnesses. The umbrella (Ex. P19) which he was holding has been recovered from the place under the seizure memo (Ex. PW5H).

Rameshwar Dayal (PW10) is an ASI of Police. He was on security duty at the PM's residence. He was also the water attendant in the pilot car of the Prime Minister. From his evidence, it will be seen that he had gone to the pantry in the PM's house and got thermos flasks with water, napkins and glass. He was informed that the Prime Minister had an engagement with a TV Team at the Akbar Road premises. He went there and saw the TV Team. He met the gardener and asked for a 'guldasta', but the gardener said that he would prepare and get it. In the meantime, he saw the Prime Minister coming out of the house and proceeding towards Akbar Road premises followed by Mr. R.K. Dhawan and others. He also joined the entourage. Rest of his evidence is identical in terms with that of Narain Singh (PW9). According to him, he ran to shield Mrs. Gandhi, but was hit by bullets. Undisputedly, he had suffered bullet injuries. He was admitted to the AIIMS for treatment. The Medico-legal Certificate (MLC) issued by the AIIMS (Ex. 10DA) supports his version. No further corroboration is necessary to accept his evidence.

e *f* *g*

Nathu Ram (PW64) is also an eye-witness. He was a dedicated servant of Mrs. Gandhi. He was always with Mrs. Gandhi not only when she was in power but also when she was out of power. His duty was to clean and dust the library-cum-bed room of the Prime Minister and then stand by in attendance. He has deposed that he was informed by Mrs. Gandhi about the change of programme in the morning of 31 October and was asked to ring up to the make-up persons to come. Accordingly, he called the make-up persons at 7.35 a.m. After Mrs. Gandhi was ready and left the room at about 9.05 a.m., he followed her. He has testified that Mrs. Gandhi was accompanied by Mr. R.K. Dhawan and followed by Narain Singh and Rameshwar Dayal. His evidence as to the relative acts of the two assassins is consistent with version of PW9 and PW10. As a faithful servant, he has helped to lift and carry Mrs. Gandhi to the car. His presence at the spot was most natural. His evidence is simple and straightforward.

h *i*

Ganga Singh (PW49) has spoken of events that immediately followed the assassination of the Prime Minister. He is a *lancenaik* in the ITBP commando force placed on duty at the PM's residence. When he heard the sound of fire arms from the TMC Gate, he ran to the spot as duty bound. He found Mrs. Gandhi on the ground lying injured. He saw two Sardars out of whom one was in uniform whom he identified in the Court as Satwant Singh. He has deposed that his Inspector Tarsem Singh who also came there made the Sardars hands up. He and other ITBP personnel secured the Sardars and took them to guard room. At the spot, he took possession of ruck-sack (Ex. P21) from Satwant Singh. The rucksack contained four magazines of 9 mm carbine two of which were full (one with 20 bullets and other with 30 bullets) and two empty.

The presence of Satwant Singh at TMC Gate is also not in dispute and indeed it was admitted by him while answering question No. 51(A) in the examination under s. 313 of the code. What is important to notice from the testimony of Ganga Singh is that Satwant Singh when apprehended by him was not injured. He was taken safely to the guard room. He did not receive any bullet injury in the incident with which we are concerned. He must have been shot evidently inside the guard room where he was taken for safe custody by the ITBP personnel. The defence put forward by Satwant Singh that he was decoyed to the TMC gate where he received bullet injury is therefore, patently false.

The eye-witnesses are not strangers to the assassins. They were familiar faces in the security ring of the Prime Minister. Their presence with Mrs. Gandhi at the spot was not accidental, but consistent with their duties. There was no scope for mistaken identity since everything happened in the broad day light. Therefore, the evidence thus far discussed itself is sufficient to bring home the guilt to Satwant Singh on all the charges levelled against him.

If necessary, the records contain evidence as to the identification of arms and ammunition entrusted to the assassins. I have already referred to the evidence relating to the sten-gun (Ex. P4) and ammunition delivered to Satwant Singh. The sten-gun along with 25 empties of the sten-gun was recovered from the place of incident under the seizure memo (Ex. PW5H). The revolver (Ex. P1) delivered to Beant Singh and 5 empties of the revolver were also collected at the spot. Dr. T.D. Dogra (PW5) while conducting limited post-mortem examination has taken two bullets from the body of Mrs. Gandhi; one from injury No. 1 and the other from injury No. 2. These bullets along with the arms recovered from the spot were sent for the opinion of G.R. Prasad (PW12), Principal Scientific Officer, Ballistic Division GFSL, New Delhi. PW12 has testified that the bullets recovered from the body of Mrs. Gandhi are traceable to the sten-gun and the revolver. Similar is the evidence with regard to the other bullets recovered from the place of incident. The record also contains evidence about the total tally of the bullets fired and the empties collected. It is needless to discuss that evidence here.

It is, however, argued for the accused that the finger prints found on the sten-gun were not tested for comparison and the two bullets recovered from the body of Mrs. Gandhi were not examined for the traces of blood or tissues. It is further said that the post-mortem examination conducted by Dr. Dogra ought to have been full and complete to clinch the issues. There is no substance in these contentions. It is not necessary to confirm the finger prints on the sten-gun, as that of the accused when it is proved that that sten-gun was delivered to him. The examination of the bullets recovered from the body of Mrs. Gandhi for the traces of blood or tissues is also unnecessary, since one of the bullets taken by the doctor tallied with the sten-gun (Ex. P4). Equally, limited post-mortem examination conducted by Dr. Dogra would not affect the merits of the case. It is not always necessary to have a complete post-mortem in every case. Section 174 of the code confers discretion to the police officer not to

send the body for post mortem examination if there is no doubt as to the cause of death. If the cause of death is absolutely certain and beyond the pale of doubt or controversy, it is unnecessary to have the post-mortem done by a medical officer. In the instant case, there was no controversy about the cause of death of Mrs. Gandhi. A complete post-mortem of the body was therefore uncalled for.

From the aforesaid direct testimony coupled with the other clinching circumstances available on record, there is not even an iota of doubt about the crime committed by Satwant Singh. I agree with High Court that he is guilty of all the charges. In this view of the matter, it is unnecessary to burden this case by reference to confession of Satwant Singh.

This takes me to the question of sentence. Section 354(3) of the code 1973 marks a significant shift in the legislative policy of awarding death sentence. Now the normal sentence for murder is imprisonment for life and not sentence of death. The Court is required to give special reasons for awarding death sentence. Special reasons mean specific facts and circumstances obtained in the case justifying the extreme penalty. This Court in *Bachan Singh v. State of Punjab* [1980] 2 SCC 684 has indicated certain guidelines to be applied to the facts of each individual case where the question of imposing death sentence arises. It was observed that in cases where there is no proof of extreme culpability the extreme penalty need not be given. It may be given only in rarest of rare cases, where there is no extenuating circumstance. In *Machhi Singh v. State of Punjab* [1983] 3 SCN 413, this Court again indicated some principles as to what constitutes "the rarest of rare cases" which warrant the imposition of death sentence. The High Court has carefully examined these principles and given reason why in this case, the death sentence alone should be awarded.

In my opinion, the punishment measured is deserved. There cannot be two opinions on this issue. The "Blue Star Operation" was not directed to cause damage to Akal Takht. Nor it was intended to hurt the religious feelings of Sikhs. The decision was taken by the responsible and responsive Government in the national interest. The Prime Minister (late) Mrs. Indira Gandhi was, however, made the target for the consequences of the decision. The security guards who were duty bound to protect the Prime Minister at the cost of their lives, themselves became the assassins. Incredible but true. All values and all ideals in life; all norms and obligations are thrown to the winds. It is a betrayal of the worst order. It is the most foul and senseless assassination. The preparations for the execution of this egregious crime do deserve the dread sentence of the law.

Having regard to the views which I have expressed, I too would dismiss the appeals of Kehar Singh and Satwant Singh, but allow the appeal of Balbir Singh by setting aside his conviction and sentence, and acquitting him of all the charges.

Before parting with case, I would like to express my gratitude to Counsel *amicus curiae* for their willingness to assist, on behalf of the accused. With their profound learning and experience, they have argued the case remarkably well. I must also place it on record my appreciation about the deep learning and assiduity with which Mr. G. Ramaswami, Additional Solicitor General assisted on behalf of the state. He was extremely fair to the Court as well as to accused.

Ray J:

I have perused the judgments prepared by my learned brothers Hon'ble Oza J and Hon'ble Shetty J. I fully concur with the views expressed in these judgments. However since the matter is important I like to deal with two aspects of the case i.e., whether trial in Tihar Jail

is vitiated as it infringes the right of the accused to have open public trial and secondly, whether the confession of accused Satwant Singh being not made in the manner prescribed under s. 164 of the Code of Criminal Procedure is admissible in evidence and whether the same can be relied upon.

A gazette notification dated 10 May 1985 was issued under s. 9(6) of the Code of Criminal Procedure mentioning that the High Court of Delhi have directed that the trial of this assassination case shall be held in the Central Jail Tihar. Another notification of the same date was issued whereby the High Court was pleased to order that this case will be tried by Shri Mahesh Chandra, Addl. Sessions Judge, New Delhi. This order was made under s. 194. It was contended on behalf of the appellant that s. 9(6) empowers the High Court to specify the place where the Session Court shall hold its sittings ordinarily. It does not empower the High Court to direct the holding of a Court in a place other than the usual place of sitting in Court for trial of a particular case. It is only in a particular case if the Court of Sessions is of opinion that it will be for the general convenience of the parties and witnesses to hold its sittings at any other place in the Sessions Division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case. The High Court has not been given any such power to order holding of Court at any other place than the Court where generally the sittings of the Court of Sessions are held or where usually the Court of Sessions sit. It was therefore, urged that the impugned order is wholly bad and arbitrary. It has also been urged in this connection that speedy trial and trial in an open Court is a fundamental right guaranteed by art. 21 of the Constitution of India. The holding of the trial in Tihar Jail as directed by the High Court is a clear breach of this fundamental right and as such the entire trial is vitiated. It has also been urged in this connection that an application was filed on behalf of the accused, Kehar Singh before the Court on 17 May 1985 objecting to the holding of trial in jail. This application, of course, was rejected by order dated 5 June 1985 by the Magistrate by holding that the trial in Tihar Jail was an open trial and there was no restriction for the public so minded to go to the place of trial to witness the same. As regards the first objection the fixing of the place of sitting of Court of Sessions was made prior to the enforcement of the Code of Criminal Procedure Amendment 1973 by the executive. Under the amended Criminal Procedure Code 1973, s. 9(6) has conferred power on the High Court to notify the place or places for the sitting of the Court of Sessions. Thus, the High Court can fix a place other than the Court where the sittings are ordinarily held if the High Court so notifies for the ends of justice. Moreover, the use of the words "ordinarily" by itself signifies that the High Court in exercise of its powers under s. 9(6) of the said Act may order the holding of Court in a place other than the Court where sittings are ordinarily held if the High Court thinks it expedient to do so and for other valid reasons such as security of the accused as well as the witnesses and also of the Court. The order of High Court notifying the trial of a particular case in a place other than the Court is not a judicial order but an administrative order. In this case because of the surcharged atmosphere and for reasons of security, the High Court ordered that the trial be held in Tihar Jail. Therefore, it cannot be said that the trial is not an open trial because of its having been held in Tihar Jail as there is nothing to show that the public or the friends and relatives of the accused were prevented from having access to the place of trial provided the space of the Court could accommodate them. It is also to be noted in this connection that various representatives of the press including representatives of international news agency like BBC etc. were allowed to attend the proceedings in Court subject to the usual regulations of the jail. It is pertinent to mention that s. 327 of the Code of Criminal Procedure provides that any offence shall be deemed to be an open Court, to which the public generally may have

access so far as the same can conveniently contain them. The place of trial in Tihar Jail according to this provision is to be deemed to be an open Court as the access of the public to it was not prohibited. Moreover, it has been submitted on behalf of the prosecution that there is nothing to show that the friends and relatives of the accused or any other member of the public was prevented from having access to the place where trial was held. On the other hand, it has been stated that permission was granted to the friends and relatives of the accused as well as to outsiders who wanted to have access to the Court to see the proceedings subject, of course, to jail regulations. Section 2(p) Criminal Procedure Code defines place as including a house, building, tent, vehicle and vessel. So Court can be held in a tent, vehicle, a vessel other than in Court. Furthermore, the proviso to s. 327 Criminal Procedure Code provides that the Presiding Judge or Magistrate may also at any stage of trial by order restrict access of the public in general, or any particular person in particular in the room or building where the trial is held. In some cases trial of criminal case is held in Court and some restrictions are imposed for security reason regarding entry into the Court. Such restrictions do not detract from trial in open Court. Section 327 proviso empowers the Presiding Judge or Magistrate to make order denying entry of public in Court. No such order had been made in this case denying access of members of public to Court.

Trial in jail does not by itself create any prejudice to the accused and it will not be illegal. In *re T.R. Ganeshan* (*supra*), it has been held that:

> Section 352 empowers the Magistrate to hold his Court in any place, provided it is done publicly and the Court premises is made accessible to the public, there can be no objection to the holding of the trial within the jail compound in the recreation room which is strictly outside the jail premises proper.
>
> Where the public have access to the Court-room and the trial is conducted in open view, the holding of the trial within the jail compound will not cause prejudice to the accused and will not be illegal, merely because it relates to an offence committed within the jail premises, where the trying Magistrate is in no way connected with the jail department.

In the case of *Sahai Singh & Ors. v. Emperor* (*supra*) the trial of the criminal case was held in jail. It was contended that the whole trial was vitiated. It has been held that:

> There is nothing to show that admittance was refused to any one who desired it, or that the prisoners were unable to communicate with their friends Counsel. No doubt, it is difficult to get Counsel to appear in jail and for that reason, if for no other, such trials are undesirable, but in this case the executive authorities were of the opinion that it would be unsafe to hold the trial elsewhere.

The trial was therefore, held to be not vitiated.

In *Prasanta Kumar Mukherjee v. The State* (*supra*) the petitioner was tried along with several others on a charge under s. 147 IPC and the trial took place inside the Hooghly Jail. In accordance with the order made by the Magistrate who was posted at Serampore. It was contended by the learned Counsel on behalf of the accused that the trial inside the Hooghly Jail was improper and prejudiced the accused in his defence. It was observed that:

> The ordinary rule is that the trials are to be held in open Court. While there is nothing in law to prevent a Magistrate by s. 352, Criminal PC, the very nature of a jail building and the restrictions which are necessarily imposed on any one visiting jail, would make it ordinarily impossible for a Magistrate to hold open Court in Jail. There may be circumstances in which for reasons of security for the accused or for the witnesses or for the Magistrate himself or for other valid reason the Magistrate may think it proper to hold Court inside jail building or

some other building and restrict the free access of the public. There is, however nothing in the record of this case to show that there was any such reason which made the Magistrate decide in favour of holding the trial in a jail.

Similar observation has been made in the case of *Kailash Nath Aggarwal & Anor. v. Emperor* (*supra*).

This decision has been relied upon the case of *Narwarsingh & Ors. v. State* (*supra*).

In the case of *Richmond Newspapers, Inc. v. Common Wealth of Virginia* (*supra*) before the commencement of fourth trial on murder charges, Counsel for the defendant moved that the trial be closed to the public. The prosecutor stated that he had no objection, and the trial Court - apparently relying on a Virginia statute providing that in the trial of all criminal cases, "the Court may, in its discretion, exclude from the trial any persons whose presence would impair the conduct of a fair trial, provided that the right of the accused to a public trial shall not be violated" - ordered that the Court room be kept clear of all parties except the witnesses when they testified. Later that day a newspaper and its two reporters, who had been present at the time the order was issued but who made no objection, sought a hearing on a motion to vacate the closure order. After a closed hearing on the motion at which Counsel for the newspaper argued that constitutional considerations mandated that before ordering closure, the Court should first decide that the right of the defendant could be protected in no other way, the Court denied that motion to vacate and ordered the trial to continue with the press and public excluded, expressing his inclination to go along with the defendant's motion so long as it did not completely over-ride all rights of everyone else. Subsequently the Judge granted a defence motion to strike the prosecution's evidence and found the defendant not guilty of murder, and the Court granted the newspaper's motion to intervene *nunc pro tunc* in the case. The newspaper then petitioned the Virginia Supreme Court for writs of *mandamus* and prohibition and filed an appeal from the trial Court's closure order, but the Virginia Supreme Court dismissed the *mandamus* and prohibition petitions and, finding no reversible error, denied the petition for appeal. On *certiorari,* the United States Supreme Court reversed the order. Virginia Chief Justice who delivered the majority judgment of the Court expressed the view that there is a guaranteed right of the public under the first and fourteenth amendments to attend criminal trials and that absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public, and emphasized that in the case at bar the trial Judge made no findings to support closure, no inquiry was made as to whether alternative solutions would have met the need to ensure fairness, and there was no recognition of any right under the constitution for the public press to attend the trial.

It has already been stated herein before that in the instant case though the trial was held in Tihar Jail for reasons of security of the accused as well as of the witnesses and of the Court and also because of the surcharged atmosphere, there was no restriction on the public to attend the Court, if they so minded. Therefore, this trial in the instant case in Tihar Jail is an open trial and it does not prejudice in any manner whatsoever the accused.

It has been urged referring to the case *Scott & Anor. v. Scott* (*supra*) that the broad principle is that the administration of justice should take place in open Court except in three cases such as suits affecting wards, lunacy proceedings and thirdly cases where secrecy, as for instance, the secrecy of a process of manufacture or discovery or invention - trade secrets is of the essence of the cause. Therefore, it recognises that in cases where the ends of justice would be defeated if the case is not heard in camera the Court may pass order for hearing the case in camera.

In the case of *Coro Lillian McPherson v. Oran Leo McPherson* [1939] AIR PC 246 a divorce suit was heard in the Judge's library. Public access to the Court-room was provided from a public corridor. There was no direct access to the library, which was approached through a double swing door in the wall of the same corridor. One wing of the door was always fixed. A brass plate with the word "private" on it was attached to it. Both the Counsel and the Judge were not in robes, and when the Judge took his seat he announced that he was sitting in open Court, and that the library, as the place of trial there was no intention of shifting out anybody though a regular Court-room was available. It was held that:

> Every Court of justice is open to every subject of the King. Publicity is the authentic hall-mark of judicial as distinct from administrative procedure and a divorce suit is not within any exception. The actual presence of the public is never of course necessary. The Court must be open to any who may present themselves for administration.

These observations were made following the judgment in the case of *Scott v. Scott* (*supra*).

All these cases have been considered by this Court in *Naresh Shridhar Mifajkar & Ors. v. State of Maharastra & Anor.* (*supra*) wherein it has been observed that:

> While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the trial is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open Court. If the principle that all trials before Courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course.
>
> ... In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end. It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice.

Though public trial or trial in open Court is the rule yet in cases where the ends of justice would be defeated if the trial is held in public, it is in that case the Court has got inherent jurisdiction to hold trial in camera. Therefore, the holding of trial in jail cannot be said to be illegal and bad and entire trial cannot be questioned as vitiated if the High Court thinks it expedient to hold the trial in jail. The submission of the learned Counsel on behalf of the appellant on this issue is not sustainable.

This Court while considering the plea made on behalf of the detenu that the proceedings of the Advisory Board should be thrown open to the public in the case of *A.K. Roy, etc. v. Union of India & Anor.* (*supra*) held that:

> The right to public trial is not one of the guaranteed rights under our constitution as it is under the 6th amendment of the American Constitution which secures to persons charged with crimes a public, as well as a speedy, trial. Even under the American Constitution, the right guaranteed by the 6th amendment is held to be personal to the accused, which the public

> in general cannot share. Considering the nature of the inquiry which the Advisory Board has to undertake, we do not think that the interest of justice will be served better by giving access to the public to the proceedings of the Advisory Board.

I do not think it expedient to consider this aspect of the matter at this juncture in view of the explicit provision made in s. 327 of Code of Criminal Procedure 1973 corresponding to s. 352 of the old Criminal Procedure Code which enjoins that the place in which any criminal Court is held for the purpose of inquiring into or trying and offence shall be deemed to be an open Court.

The confession of accused No. 1, Satwant Singh which was recorded in Tihar Jail by the Link Magistrate, Shri Bharat Bhushan has been vehemently criticised by the learned Counsel Mr. Ram Jethmalani on the ground that the confession being not recorded in open Court as required under the provisions of s. 164 of Criminal Procedure Code, is inadmissible in evidence and it cannot be adhered to for convicting the accused. This submission does not hold good in view of the pronouncement of this Court in *Hem Raj Devilal v. The State of Ajmer* [1954] AIR AC 462 wherein it has been held that:

> No doubt the confession was recorded in jail though ordinarily it should have been recorded in the Court House, but that irregularity seems to have been made because nobody seems to have realized that that was the appropriate place to record it but this circumstance does not affect in this case the voluntary character of the confession.

In *Ram Chandra & Anor. v. State of Uttar Pradesh* [1957] AIR SC 381 the appellant was sent to Naini Jail on 13 July. He was brought before a Magistrate on 17 July but he refused to make any confession. On 7 October a letter signed by the appellant was sent to the District Magistrate, Allahabad, through the Superintendent of the Jail to the effect that he wanted to make a confession. At about this time he was kept in solitary confinement and that the police officer who was investigating this case went to Naini Jail on 8 and 9 October. The District Magistrate deputed Smt. Madhuri Shrivastave to record the confession. She went to jail on 10 October and recorded the confession in jail. Before recording the confession the Magistrate did not attempt to ascertain why he was making the confession after such a long lapse of time. She in her cross-examination said that she thought it improper to record his statement in Court and during Court hours. She was not aware of the rules framed by the Government that confession is to be recorded ordinarily in open Court and during Court hours unless for exceptional reasons it is not feasible to do so. She also did not apprise the accused that he is not bound to make any statement and such statement if made may be used against him. She gave the usual certificates that the accused made the statement voluntarily. In these circumstances it was held that the confession was not recorded in accordance with law and it was not explained to the accused that he was not bound to make any statement and if any statement is made, the same will be used against him. It was therefore, held that the confession was not a voluntary one and the same cannot be used in convicting the accused.

Thus the reason for not taking into consideration the confession was that the mandatory requirement of explaining to the accused as provided in s. 164(3) of Criminal Procedure Code, was not observed before the recording of confession and as such the confession was not a voluntary one. The recording of confession in jail by itself was not held to invalidate the confession by this Court. It has been urged by Mr. Jethmalani that a confession not recorded in the manner prescribed in s. 164 Cr. PC and if a certificate as required to be appended below the confession is not made in accordance with the prescribed terms, is inadmissible in evidence. In support of this submission reference was made to *Nazir Ahmed v. King Emperor* [1963] AIR PC 253(2). In this case the judicial committee observed that principle applied in

Taylor v. Taylor [1876] 1 Ch D 426 to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under s. 64 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under ss. 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle.

It has been urged on behalf of the respondent that if the confession is not recorded in proper form as prescribed by s. 164 read with s. 281 which corresponds to earlier s. 364, it is mere irregularity and it can be cured by s. 463 on taking evidence that the statement was recorded duly and it has not injured the accused in defence on merits. The question came up for consideration in this Court in the case of *State of Utter Pradesh v. Singhara Singh & Ors.* [1876] 1 Chancery Division 426. It has been observed that:

> What s. 533 therefore, does is to permit oral evidence to be given to prove that the procedure laid down in s. 164 had in fact been followed when the Court finds that the record produced before it does not show that that was so. If the oral evidence establishes that the procedure had been followed, then only can the record be admitted. Therefore far from showing that the procedure, laid down in s. 164 is not intended to be obligatory, s. 533 really emphasises that that procedure has to be followed. The section only permits oral evidence to prove that the procedure had actually been followed in certain cases where the record which ought to show that does not on the face of it do so.

In *Ranbir Singh & Ors. v. Emperor* [1932] Cr. LJ 242 the accused was taken into the *thana* compound and the Magistrate who is a retired District Judge recorded his statement in the open at 9 p.m. The Magistrate did not tell him that he was a Magistrate and he did not satisfy himself by questioning him whether he was making the confession voluntarily, although he states quite definitely that he was satisfied by observation that the man was making a voluntary statement. It was observed that the failure of the Magistrate to question the accused as to his making the confession voluntarily is a radical and fatal defect, which cannot be cured by s. 533 of the Criminal Procedure Code. The confession was held inadmissible.

In the case of *Pratap Singh v. The Crown* [1952] ILJ (Lahore Series) 415 it does not appear from the confession that the provisions of s. 164(3) i.e., to explain to the person who is to make it that he is not bound to make a confession at all and that if he does so, it may be used as evidence against him, were not applied by the Magistrate. Question arose whether such a defect in the confession can be cured by s. 533 Criminal Procedure Code. It was held that a defect in form is curable and a defect in substance is not. It was further held that

> If as a matter of fact the statement was duly recorded, that is to say, after the required explanation had been given, but the Magistrate had failed to embody that fact in the certificate such a defect would be curable. If the explanation had not in fact been made the statement could not be held to have 'duly made' and s. 533 could not be appealed to.

In *Prag v. Emperor* [1931] Cr LJ 97 it has been held that in recording a confession it is the duty of the Magistrate to satisfy himself in every reasonable way that the confession is made voluntarily and further it is the imperative duty of the Magistrate to record those questions and answers by means of which he has satisfied himself that the confession is in fact voluntary. Omission to warn the accused that he was making a confession before a Magistrate and to record the steps taken by the Magistrate to see that the confession was made voluntarily is a substantial defect not curable by s. 533 Criminal Procedure Code.

The High Court of Orissa in the case of *Ambai Majhi v. The State* [1966] Cr. LJ 651 has held that s. 533 can cure errors of forms and not of substance.

On a consideration of the above decisions it is manifest that if the provisions of s. 164(2) which require that the Magistrate before recording confession shall explain to the person making confession that he is not bound to make a confession and if he does so it may be used as evidence against him and upon questioning the person if the Magistrate has reasons to believe that it is being made voluntarily then the confession will be recorded by the Magistrate. The compliance of the sub-section (2) of s. 164 is therefore, mandatory and imperative and non-compliance of it renders the confession inadmissible in evidence. Section 463 (old s. 533) of the Code of Criminal Procedure provides that where the questions and answers regarding the confession have not been recorded evidence can be adduced to prove that in fact the requirements of sub-section (2) of s. 164 read with s. 281 have in fact been complied with. If the Court comes to a finding that such a compliance had in fact been made the mere omission to record the same in the proper form will not render it inadmissible evidence and the defect is cured under s. 463 (s. 533 of the old Criminal Procedure Code) but when there is non-compliance of the mandatory requirement of s. 164(2) Criminal Procedure Code and it comes out in evidence that no such explanation as envisaged in the aforesaid by the Magistrate, this substantial defect cannot be cured under s. 463 Criminal Procedure Code.

In *Abdul Rajak Murtaja Dafedar v. State of Maharashtra* [1970] SCR 551 it was observed that the appellant himself never said that he made the confession on account of any inducement or coercion on the part of the police. The appellant was kept in jail custody for 3 days from 25 October to 28 October 1966 and on 28 October 1966 the Executive Magistrate made the preliminary questioning of the appellant, gave him a warning and sent him back to District Jail at Sangli. On the next day the appellant was produced before the Magistrate and the confession was recorded. The appellant had thus spent four days in judicial custody and he was not under the influence of the investigating agency for at least four days. Again he had 24 hours to think after he was told by the Magistrate that he was not bound to make any confession and if he made one it would be used against him. It was held that the confession could not be said to be not voluntary.

In *Dagdu & Ors. etc. v. State of Maharashtra* [1977] AIR SC 1573 eight confessions were recorded by a Sub-Divisional Magistrate, Devidas Sakharam Pawar (PE23) without complying with mandatory provisions of s. 154 of the Code of Criminal Procedure. He made no effort to ascertain from any of the accused whether he or she was making the confession voluntarily. Nor did he ask any of the accused whether the police had offered or promised any incentive for making the confessional statement. He also did not try to ascertain for how long the confessing accused were in jail custody prior to his production for recording the confession. There was no record to show whether the accused were sent after they were given time for reflection. In none of these confessional statements there was a memorandum as required by s. 164 of the Code of Criminal Procedure that the Magistrate believed "that the confession was voluntarily made." It was observed by this Court that:

> The failure to observe the safeguards prescribed therein and in practice calculated to impair the evidentiary value of the confessional statements.

It was further observed that:

> Considering the circumstances leading to the processional recording of the eight confessions and the object disregard, by the Magistrate, of the provisions contained in s. 164 of the Code

and of the instructions issued by the High Court, we are of the opinion that no reliance can be placed on any of the confessions.

In *Ram Prakash v. The State of Punjab* [1959] SCR 1219 it was held that:

> A voluntary and true confession made by an accused though it was subsequently retracted by him, can be taken into consideration against a co-accused by virtue of s. 30 of the Indian Evidence Act, but as a matter of prudence and practice the Court should not act upon it to sustain a conviction of the co-accused without full, and strong corroboration in material particulars both as to the crime and as to his connection with that crime.

In the instant case the accused Satwant Singh who was in police custody was produced before the Magistrate Shri S.L. Khanna on 29 November 1984. On that day accused made an application (Ext. PW11A) stating that he wanted to make a statement about the facts concerning Indira Gandhi Assassination Case. The Magistrate directed the remand of the accused in judicial custody till 1 December 1984 giving the accused time to reconsider and reflect. The Magistrate also told him that he was not bound to make any statement and if any statement is made same might be used against him. The Magistrate also directed to send a letter to the Secretary, Legal Aid Committee to provide legal assistance to the accused at the expense of the State. On 1 December 1984, the Magistrate enquired of the accused whether he wanted to make a statement whereon the accused stated that he wanted to make a statement. He was allowed to consult his Counsel Shri I.U. Khan, advocate who conferred with him for about 15 minutes privately. As the accused insisted that his statement be recorded, the application was sent by the Magistrate, Shri S.K. Khanna to the Link Magistrate, Shri Bharat Bhushan for recording his statement. Before recording his statement Dr. Vijay Kumar was called to examine the accused. Dr. Vijay Kumar stated in his report (Ext. PW11B) that in his opinion the accused is fit to make his statement. It appears from Ext. PW11E2 as well as from the questions and answers which were put to the accused (Ext. PW11B3) that the Link Magistrate, Shri Bharat Bhushan warned the accused that he was not bound to make any confessional statement and in case he does so it may be used against him during trial. The accused in spite of this warning wanted to make a statement and thereafter the confessional statement Ext. PW11C was recorded by the Link Magistrate. In the certificate appended to the said confessional statement it has been stated that there was no pressure upon the accused and there was neither any police officer nor any body else within the hearing or sight when the statement was recorded. Therefore, it appears that the accused was put the necessary questions and was given the warning that he was not bound to make any statement and in case any statement is made, the same might be used against him by the prosecution for his conviction. Of course, no question was put by the Magistrate to the accused as to why he wanted to make a confessional statement. It also appears from the evidence of the Magistrate, Shri Bharat Bhushan (Ext. PW11) that the confessional statement was made voluntarily by the accused. So that defect in recording the statement in the form prescribed is cured by s. 463 of the Code of Criminal Procedure. It is indeed appropriate to mention in this connection that the defect in recording the statement in appropriate form prescribed can be cured under s. 463 of the Code of Criminal Procedure provided the mandatory provisions of s. 164(2) namely explaining to the accused that he was not bound to make a statement and if a statement is made the same might be used against him, have been complied with and the same is established on an examination of the Magistrate that the mandatory provisions have been complied with.

The accused No. 1, Satwant Singh has been charged with the murder of Smt. Indira Gandhi, Prime Minister of India under s. 302 IPC read with ss. 120B and 34 IPC. He has also been

charged under s. 307 IPC for attempt to murder Rameshwar Dayal. He has further been charged under s. 27 of the Arms Act.

The prosecution has examined three eye witnesses namely PW9 Narain Singh, PW10 Rameshwar Dayal and PW64 Nathu Ram. Prosecution has also examined PW49 Ganga Singh, member of ITBP who immediately after the firing apprehended Satwant Singh.

PW9 Narain Singh, deposed that he was on duty at 1, Sufdarjang Road from 7.30 a.m. on 31 October 1984 and the place of duty was isolation cordon near the porch. He stated that at 8.45 a.m. he took hold of the umbrella and took his position near the pantry gate as he came to know that the Prime Minister, Smt. Indira Gandhi had to meet the foreign TV representatives in No. 1, Akbar Road. At 9.10 a.m. Prime Minister emerged out of her house No. 1, Safdarjang Road followed by Nathu Ram (PW64) and her private secretary, R.K. Dhawan. At that time the deponent was holding the umbrella over the head of Prime Minister to save her from sun and was moving on her right side. They approached the TMC gate and when they were about 10 feet from there, he saw that the gate was open. He also saw Beant Singh on the left side and Satwant Singh on the right side. The former was in a safari suit and the latter i.e. Satwant Singh took out his revolver from the right dub and fired at the Prime Minister and immediately thereafter Satwant Singh also started firing upon the Prime Minister. The Prime Minister was hit by those bullets and injured and fell down on the right side. Seeing them firing on the Prime Minister, he threw the umbrella and took out his revolver and jumped upon Beant Singh whereupon his (Beant singh) revolver fell from his hands. He secured Beant Singh. He further stated that he noticed Rameshwar Dayal, ASI sustained bullet injuries. The doctor himself came running by then and at his direction he, Mr. Bhatt, ACP, Dr. Opey and Nathu Ram took her to the escort car which had arrived and placed her in the rear seat. He further said that he went to the hospital in staff car. ASI, Rameshwar Dayal was taken in another escort car to AIIMS. In his cross-examination he further stated that except for the accused Satwant Singh he did not find any constable of DAP on duty on 31October 1984 in the PM house on the portion through which he passed. He also stated that it was incorrect to suggest that Satwant Singh had sustained bullet injuries before Mrs. Indira Gandhi had been fired at. He also denied the suggestion that he was not present on the spot or that bullets were coming from all the four sides rather bullets were coming from the front side of Mrs. Indira Gandhi. He also stated that he was stunned when he saw the bullets coming from Beant Singh and Satwant Singh. He also stated that as Mrs. Indira Gandhi approached towards TMC gate within its ten feet, Beant Singh took out his revolver and immediately shot at Mrs. Indira Gandhi.

PW10 ASI Rameshwar Dayal deposed to the following effect:

> I was on duty on 31 October 1984 at PM house at No. 1, Safdarjang Road from 7.30 a.m. to 1.30 p.m. It was a security duty. I was on duty of water attendant in the pilot's car of the Prime Minister. I enquired about the PM Programme. I learnt that the Prime Minister was to attend a film shooting VCR in No. 1, Akbar Road at 9 a.m. As I was going from No. 1, Safdarjang Road to No. 1, Akbar Road and had reached the concrete road from the nursery, I saw Prime Minister, Mrs. Indira Gandhi coming from No. 1, Safdarjang Road to No. 1 Akbar Road. At that time, Shri R.K. Dhawan, H.C. Narain Singh with an umbrella on the right side a little behind her and Nathu Ram following R.K. Dhawan were also seen by me going towards No. 1, Akbar Road from No. 1, Safdarjang Road. I also started moving behind them. As the Prime Minister reached near the Sentry booth link gate i.e. the TMC Gate or Akbar Road front gate, I saw Beant Singh fire at the Prime Minister with his revolver by raising his right hand and immediately thereafter Satwant Singh also fired at the Prime Minister with his sten-gun. I saw the Prime Minister falling. I ran to shield the Prime Minister and I

was also injured with the bullets. I fell down and I got up. By that time, Narain Singh HC had thrown his umbrella and had run to seize and secure Beant Singh and one Lawang Sherpa ran to secure them from Akabar Road side. They i.e. Beant Singh and Satwant Singh threw their arms. In the meanwhile, ITBP staff secured Beant Singh and Satwant Singh. At that time Beant Singh said "whatever was to be done had been done."

In his cross-examination, he stated that the bullet had come from Satwant Singh side and it was that bullet which hit him. He also stated, "In fact, I could not have so stated since I had already told in my statement dated 2 November 1984 that Satwant and Beant Singh had fired at the Prime Minister, Smt. Indira Gandhi and injured her." He denied the suggestion that he was at a distance of 60-65 feet away from the Prime Minister when she was fired at and stated that he was at a distance of only 10/15 steps.

PW64 Nathu Ram, Ex-library Assistant and personnel attendant to Smt. Indira Gandhi stated in his deposition to the following effect:

On 31 October 1984 I had come on my duty at 7 a.m. to No. 1, Safdarjang Road as library assistant and personnel attendant of late PM Smt. Indira Gandhi. I was required to come in the morning, open the library-cum-bed room of the late Prime Minister and get it cleaned and dusted and then be in attendance upon the late PM to do what she wanted me to do. On 31 October 1984 as well after performing the above duties by about 9.05 a.m. the Prime Minister, Smt. Indira Gandhi was ready to go out with Mr. R.K. Dhawan. The Prime Minister there-upon left the room at 9.05 a.m. followed by me. She reached the pantry gate where Shri Narain Singh was waiting with an umbrella in his hand. As the Prime Minister emerged out of the pantry gate, Shri Narain Singh opened the umbrella over her and held the said umbrella in his right hand while the Prime Minister was moving towards No. 1, Akbar Road. At that time, when PM was moving towards No. 1, Akbar Road, Narain Singh was with her on the right side holding the umbrella over her while on the left side Shri R.K. Dhawan. As all of us came out of the jafri gate, I noticed that the TMC gate was lying open and Beant Singh SI in safari suit was standing on our left side while Satwant Singh constable in uniform was standing on the right side of us near the TMC gate. As we reached within about 10-11 feet of the TMC gate, Beant Singh took out his revolver and started firing on the Prime Minister. Immediately, thereafter Satwant Singh also started firing from his sten-gun upon the Prime Minister. Then the Prime Minister, Mrs. Indira Gandhi fell towards her right side. We were startled. At that very moment, Narain Singh threw umbrella and jumped upon Beant Singh and took out his (Narain Singh's) revolver, and secure Beant Singh. Simultaneously, Mr. Bhatt and Lawang Sherpa and other uniformed persons also arrived there and they secured Satwant Singh accused. Beant Singh and Satwant Singh threw their arms on the ground. When Narain Singh got up for bringing the doctor, Dr. Opey arrived on the spot. When myself, Shri Bhatt, Dr. Opey were in the process of removing the Prime Minister, Smt. Indira Gandhi to the car along with Shri R.K. Dhawan and Narain Singh at that time I noticed that Rameshwar Dayal was also holding his leg in injured state on the spot.

In his cross-examination in answer to a question he stated "I saw two persons namely Beant Singh and Satwant Singh with arms. Shri Narain Singh also had arm with him and none else had the arms."

On a consideration and appraisement of the evidence of the eye-witnesses, it is clear and apparent that the accused Satwant Singh and Beant Singh fired at Smt. Indira Gandhi while she was approaching the TMC gate accompanied by her private secretary Shri R.K. Dhawan, Narain Singh, HC, PW9 holding an ubmrella on her head to protect her from sun accompanying her on the right side and Nathu Ram following behind Shri R.K. Dhawan. It also appears that Beant Singh first started firing from his service revolver and simultaneously the accused

No. 1, Satwant Singh also cocked his SAF Carbine towards the Prime Minister whereon the Prime Minister fell on the ground on her right side. It has been tried to suggest that the bullets were coming from all the sides and accused Satwant Singh was seriously injured by such bullets and Beant Singh died. This suggestion was however, denied by the eye-witnesses and they specifically stated that the accused Satwant Singh and Beant Singh shot on the Prime Minister while she was approaching the TMC gate and she was about 8-10 steps away from the TMC gate. It has been denied that there was any firing from all the sides and it has been specifically stated in cross-examination that the firing was from the front side which hit the Prime Minister and the said firing was caused by Beant Singh and Satwant Singh from their respective service revolver and SAF Carbine. It also appears that Beant Singh and accused Satwant Singh were apprehended by PW9 Narain Singh HC and by the ITBP people. It has also been specifically stated by PW9 in cross-examination that Satwant Singh did not sustain bullet injuries before Smt. Indira Gandhi had been fired at. The suggestion on behalf of the defence that there was firing from all sides and accused Satwant Singh was injured seriously and Beant Singh died by this firing has got no basis and it is unsustainable.

PW49 Ganga Singh, L/Naik of ITBP stated in his deposition to the following effect:

> On 31 October 1984 I was posted on duty at No. 1, Safdarjang Road from 6 a.m. to 2 p.m. near the main gate in guard room. At 9.15 a.m. I heard sound of firing of bullets from the TMC gate. I along with Shri Tersem Singh, Padam Singh, Padam Singh, Jai Chand, Daya Nand thereupon took out carbines and went towards TMC gate running. We found Prime Minister Madam lying in injured condition on the floor. Near the gate there were two Sardars in white clothes, again said one was in civil dress and the other was in uniform. The uniformed Sardar is present in the Court i.e. Satwant Singh. He had a carbine in his hand. The other Sardar had a small weapon. Inspector Tersem Singh made them hands-up. I secured them. I and Padam Singh secured the uniformed Sarder. The sardar was secured by Jai Chand and Daya Nand. I took into possession a ruck-sack from the shoulder of the uniformed sardar. Thereupon, Inspector Tersem Singh asked us to take the two sardars to the guard room. The carbine and the small weapon were thrown on the ground. We then took both of them to the guard room. We left them there and Inspector Tersem Singh asked us to go to our point of duty. I heard some fire-shots from the guard room side and the accused no. 1 and Beant Singh were lying injured there.

In cross-examination he stated that

> The revolver and sten-gun were in the hands of the sardars before Shri Tersem singh made them hands-up. It is incorrect to suggest that Satwant Singh had already been hit by a bullet when I reached the TMC gate. I secured Satwant Singh from the right side. Rucksack was on the left shoulder.

It is obvious from the deposition of PW49 that when he and other ITBP men took Beant Singh and Satwant Singh to the guard room they were not at all in injured condition. It has also been stated by this witness that the revolver and SAF carbine were in the hands of two sardars before Shri Tersem Singh made them hands-up. This witness also denied the suggestion that Satwant Singh had already been hit by a bullet when he reached the TMC gate. The evidence of this witness therefore, contradicts and falsifies the suggestion tried to be made on behalf of the defence, i.e. the accused Satwant Singh was injured already by bullets coming from all sides.

It is pertinent to mention in this connection of the evidence of PW27 ASI Mangat Ram who was posted as ASI personnel in 2nd Battalion DAP. He brought the record relating to Satwant Singh constable No. 1614 in 2nd Battalion DAP who was posted on 31 October 1984 in C & D at Teen Murti Line. He also deposed that on 27 June 1983 *vide* order No. 2362-67/ASIP

22nd Battalion DAP he was posted in C Company of Teen Murti Line. Daily diary maintained at Teen Murti 2nd Battalion DAP (Ex. PW14C) shows from entry No. 85 dated 30/31-10-1984 that on the morning on 31 October 1984, Satwant Singh constable No. 11614 was put on duty at Beat No. 4 in the Akbar Road House and not at the TMC gate and this entry is confirmed by PW15, the daily diary clerk at Teen Murti Line. He deposed that entry No. 85 in Ex. PW14A is in his hand and is correct. He also stated that the accused Satwant Singh was put on duty at Beat No. 4, Akbar Road in the PM House and not at TMC gate and he was given arms as per koth register. The arms and ammunitions register (Ex. PW3A) at Teen Murti Line shows that Satwant Singh was issued a SAF Carbine (sten-gun) having Butt No. 80 along with 5 magazines and 100 live rounds of 9 mm ammunition and that he signed the register in taken of its receipt. Therefore this goes to show the presence of the accused Satwant Singh at the TMC gate in the PM house at 1-Akbar Road on duty from 7.30 a.m. on 31 October 1984 with a SAF Carbine Butt No. 80. There is therefore no iota of doubt that the accused No. 1, Satwant Singh was present at the TMC gate at No. 1, Akbar Road on the fateful morning i.e. on 31 October 1984. It is to be noted in this connection that the duty of accused Satwant Singh constable was placed at Beat No. 4 Akbar Road House on 31 October 1984 as is evident from entry No. 85 in the Rojnamcha i.e. daily diary kept at Teen Murti Line but he in conspiracy with Beant Singh manipulated his duty at TMC gate on the plea that he was suffering from dysentery and having loose motions. This will be obvious from the deposition of PW43 Constable Deshpal Singh No. 1157 who deposed that he was posted at TMC gate 1, Safdarjang Road, PM House w.e.f. 28 October 1984 from 7 p.m. to 10 p.m. and also from 7 a.m. to 10 a.m. He further stated that he was on duty on 29, 30 and 31 October 1984 at these hours. On 31 October 1984 he reported in the Teen Murti Line and then took his arm and proceeded towards his duty in PM House. When he reached the PM House, the R.C. Kishan Lal No. 1109 told him that Satwant Singh who was on duty at Beat No. 4 was suffering from loose motions and therefore he should give duty at Beat No. 4 while Satwant Singh would take his position duty at TMC gate, as there was laterine near TMC gate.

This clearly shows that Satwant Singh, accused No. 1 manipulated his duty from Beat No. 4 to TMC gate in PM House and so there is no doubt about his presence at the TMC gate on 31 October 1984 from 7.30 a.m.

PW12 G.R. Prasad, Principal Scientific Officer In charge Ballistic Division, CFSL, New Delhi has deposed to the effect that the bullet (marked BC/7) recovered from injury No. 1 described in the post-mortem report was fired from the 9mm sten-gun (marked W/1). He further deposed that the bullet recovered from injury No. 2 was fired from the 38" special revolver (marked W/2). This affirms the prosecution case that the accused Satwant Singh and deceased Beant Singh fired shots at Smt. Indira Gandhi from their respective weapons. The deposition of these independent witnesses is corroborated by the confessional statement PW11/C made by the accused Satwant Singh. Though the said confession was retracted subsequently by the accused, the same can be used by the Court against the accused in convicting him. In *Manohar Singh v. Emperor* [1946] AIR All 15 it has been held that a confession made by an accused cannot be used to convict his co-accused unless there is corroborative evidence against the co-accused but a person can be convicted solely upon his own confession even if retracted if the Court believes it to be true.

The law has been well settled in a decision of this Court in *Sarwan Singh Rattan Singh v. State of Punjab* [1957] AIR SC 637 wherein it has been observed that:

In law it is always open to Court to convict an accused on his confession itself though he has retracted it at a later stage. Nevertheless usually Courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case.

In the instant case the confessional statements were corroborated by independent evidences which clearly prove the guilt of the accused.

Therefore the charges against the accused Satwant Singh have been duly proved. The concurrent findings of the trial Court as well as of the High Court that offences under s. 302 IPC read with s. 120B, IPC and s. 34 IPC were proved, must be upheld. It is a gruesome murder committed by the accused who was employed as a security guard to protect the Prime Minister Indira Gandhi. It is one of the rarest of rare cases in which extreme penalty of death is called for. The charge of conspiracy has been elaborately dealt with in the judgments rendered by my learned brothers. It appears therefrom that the charge of conspiracy against Kehar Singh with the accused Satwant Singh and Beant Singh since deceased who are the constable and SI respectively posted at the PM's House to look after the security of Smt. Indira Gandhi has been proved without any reasonable doubt. Therefore, the appeal Nos. 180 and 182 of 1987 are dismissed and the conviction and sentence of death as confirmed by the High Court are upheld. The charge of conspiracy against accused No. 2, Balbir Singh has not been proved and as such the appeal filed by him i.e. criminal appeal No. 181 of 1987 is allowed and the judgment of the High Court is set aside. The appellant should be set free forthwith.

Order accordingly.

Also found at [1989] 1 CLJ 318